FOREWORD

This volume contains the Acts of the Second Regular Session and First Extraordinary Session of the 65th Legislature, 1982.

Second Regular Session, 1982

The second regular session of the 65th Legislature convened on January 13, 1982. The constitutional sixty-day limit on the duration of the session being midnight on March 13, 1982, sine die adjournment came on that night.

Bills totaling 1,715 were introduced in the two houses during this session (1036 House and 679 Senate). The Legislature passed 143 bills, 79 House and 64 Senate. The Governor approved 133 bills and vetoed nine. However, two bills disapproved were re-passed, notwithstanding the Governor's objections, and H. B. 1150, the Budget Bill, became law without the signature of the Governor, leaving a net total of seven bills lost through veto.

Fifty-eight concurrent resolutions were introduced during the session, 30 House and 28 Senate, of which four House and five Senate were adopted. Twenty-seven House Joint and 14 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted two House Joint Resolutions—H. J. R. 5, Sheriff's Succession Amendment, and H. J. R. 14, Fair Educational Opportunity Amendment. The House had 24 House Resolutions and the Senate had 37 Senate Resolutions, of which 14 House and 31 Senate were adopted.

The Senate failed to pass 70 House bills passed by the House and 91 Senate bills failed passage by the House. Three House bills and one Senate bill died in conference. One House Joint Resolution, H. J. R. 22, County Officers Compensation Amendment, died in conference.

First Extraordinary Session, 1982


The Proclamation of the Governor convening the session contained six items of business for consideration.

[ iii ]
A total of ten bills were introduced, five House bills and five Senate bills, of which the five Senate bills passed.

One concurrent resolution was offered and adopted during the session, H. C. R. 1, raising a Joint Assembly to hear an address by His Excellency, the Governor. Seven Senate resolutions and one House resolution were introduced, of which five Senate and one House resolution were adopted.

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.

C. A. Blankenship, Clerk

House of Delegates
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# MEMBERS OF THE SENATE

## REGULAR SESSION, 1982

### OFFICERS

**President**—Warren R. McGraw, Pineville  
**President Pro Tem**—Robert R. Nelson, Huntington  
**Clerk**—Todd C. Willis, Logan  
**Sergeant at Arms**—E. L. Bevins, Williamson  
**Doorkeeper**—Aubrey R. Grizzell, St. Albans

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x Appointed a member of the Senate May 25, 1981, to fill the vacancy created by the death of the Honorable George W. Duber.  
* Elected in 1978. All others elected in 1980.

(D) Democrats........................................ 27  
(R) Republicans...................................... 7  
Total .................................................. 34
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1982

OFFICERS

Speaker—Clyde M. See, Jr., Moorefield
Speaker Pro Temp—Donald L. Kopp, Clarksburg
Clerk—C. A. Blankenship, Pineville
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—Dannie Wingo, Yukon

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1 Appointed a member of the House of Delegates December 15, 1980, to fill the vacancy created by the resignation of Delegate-elect George W. Dobber.
2 Appointed a member of the House of Delegates May 25, 1981, to fill the vacancy created by the resignation of the Honorable Jimmy Joe Wedge.
3 Appointed a member of the House of Delegates June 21, 1981, to fill the vacancy created by the resignation of the Honorable Richard Thompson.
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<td>Thomas W. Steptoe, Jr. (D)</td>
<td>Charles Town</td>
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*Appointed a member of the House of Delegates December 14, 1981, to fill the vacancy created by the resignation of the Honorable John R. Frazier.*

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STANDING COMMITTEES OF THE SENATE
1982

Agriculture

Staggers (Chairman), Spears (Vice Chairman), Baylor, Chace, Holliday, Steptoe, Susman, Jones and Shaw.

Banking, Insurance and Small Business

Nelson (Chairman), Wright (Vice Chairman), Baylor, Boettner, Heck, Palumbo, Rogers, Susman, Tomblin, Ward, Williams, Harman and White.

Confirmations

Tomblin (Chairman), Steptoe (Vice Chairman), Ash, Chace, Colombo, Davis, Galperin, McCune, Nelson, Tonkovich, Williams, Harman and Shaw.

Education

Galperin (Chairman), Ash (Vice Chairman), Boettner, Chace, Colombo, Heck, Holliday, McCune, Moreland, Nelson, Palumbo, Ward, Gilligan and Jones.

Elections

Palumbo (Chairman), Chace (Vice Chairman), Gainer, Galperin, Huffman, Moreland, Rogers, Staggers, Wise, Honecker and Shaw.

Energy, Industry and Mining

Tonkovich (Chairman), Wise (Vice Chairman), Boettner, Davis, Gainer, McCune, Nelson, Tomblin, Ward, Williams, Wright, Deem and Harman.

Finance

Williams (Chairman), Tonkovich (Vice Chairman), Ash, Colombo, Davis, Gainer, Nelson, Spears, Staggers, Susman, Tomblin, Ward, Wise, Wright, Gilligan, Harman and Shaw.

Health

Wise (Chairman), Staggers (Vice Chairman), Davis, Galperin, Holliday, Huffman, Moreland, Spears, Susman, Tomblin, Williams, Jones and Shaw.
Interstate Cooperation

Gainer (Chairman), Davis (Vice Chairman), Galperin, Huffman, Tonkovich, Wright and Harman.

Judiciary

Boettner (Chairman), Moreland (Vice Chairman), Ash, Baylor, Chace, Davis, Galperin, Heck, Holliday, Huffman, McCune, Nelson, Palumbo, Rogers, Steptoe, Deem, Jones and White.

Labor

Holliday (Chairman), Chace (Vice Chairman), Heck, Huffman, Steptoe, Wise, Wright, Deem and Jones.

Local Government

McCune (Chairman), Spears (Vice Chairman), Boettner, Huffman, Moreland, Nelson, Steptoe, Susman, Williams, Honecker and Shaw.

Military

Spears (Chairman), Baylor (Vice Chairman), Heck, McCune, Rogers, Susman, Ward, Harman and White.

Natural Resources

Colombo (Chairman), Galperin (Vice Chairman), Baylor, Boettner, Chace, Gainer, Holliday, Palumbo, Rogers, Staggers, Steptoe, Wise, Deem, Honecker and Jones.

Public Institutions

Davis (Chairman), Holliday (Vice Chairman), Ash, Chace, McCune, Spears, Staggers, Wise, Wright, Honecker and Jones.

Rules

McGraw (Chairman), Boettner, Galperin, Moreland, Nelson, Tonkovich, Williams, Wright, Deem and Jones.

Transportation

Heck (Chairman), Colombo (Vice Chairman), Gainer, Huffman, Rogers, Staggers, Tomblin, Ward, Wise, Gilligan and White.
SENATE COMMITTEES

JOINT COMMITTEES

Enrolled Bills

Baylor (Chairman), Ash (Vice Chairman), Colombo, Davis and Honecker.

Government and Finance

McGraw (Cochairman), Boettner, Moreland, Nelson, Williams, Deem and Gilligan.

Joint Rules

McGraw (Chairman ex officio), Moreland and Deem.

Legislative Rule-Making Review

Nelson (Chairman), Boettner, Galperin, Moreland, Deem and Jones.

COMMISSION ON SPECIAL INVESTIGATIONS

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

SELECT COMMITTEE

Redistricting

Williams (Chairman), Moreland (Vice Chairman), Baylor, Boettner, Chace, Deem, Jones, Nelson, Staggers, Tonkovich and Wright.
STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
1982

Agriculture and Natural Resources

Neal (Chairman of Agriculture) Harden (Vice Chairman), Ballouz (Chairman of Natural Resources), Worden (Vice Chairman), Brenda, Burke, Cook, Damron (13th Dist.), Fry, Hendricks, Hutchinson, Jennings, Jordan, Moore, Shiflet, Slack, Starcher, Steptoe, Vennari, Whitlow, Atkinson, Harman (32nd Dist.), Shaffer, Springston and Swann.

Banking and Insurance

Shepherd (Chairman of Banking), Gilliam (Vice Chairman), Martin (35th Dist.) (Chairman of Insurance), Karras (Vice Chairman), Anello, Blatnik, Damron (10th Dist.), Farley, Fry, Given, Goff, Hartman, Holmes, McCormick, Riffle, Schifano, Shiflet, Singleton, Tucker, Williams, Faircloth, Greer, Kopelman, McCuskey and Shaffer.

Constitutional Revision

Wehrle (Chairman), Dalton (Vice Chairman), Barley, Chambers, Damron (10th Dist.), Farley, Given, Hatcher, Ketchum, Knight, Martin (27th Dist.), Martin (30th Dist.), Martin (35th Dist.), Mathis, Neal, Pridemore, Shuman, Stephens, Trimboli, Tucker, Harman (33rd Dist.), Kopelman, McCuskey, McKinley and Wells.

Education

Sattes (Chairman), Hartman (Vice Chairman), Barley, Blackwell, Blatnik, Burdette, Craigo, Dalton, Davis, Fry, Givens, Hagedorn, Jordan, Kidd, Martin (27th Dist.), McCormick, Smith, Trimboli, Yanni, Conley, Prunty, Rogers, Shanboltz, Springston and Wellman.

Finance

Polan (Chairman), Farley (Vice Chairman), Brenda, Burke, Cook, Goff, Harden, Hendricks, Holmes, Hutchinsen, Jennings, Karras, Ketchum, Mathis, Neal, Pridemore, Riffle, Simpkins, Starcher, Wehrle, Kopelman, McCuskey, Otte, Swann and Wells.
HOUSE OF DELEGATES COMMITTEES

Government Organization

Shuman (Chairman), Burdette (Vice Chairman), Anello, Ballouz, Bledsoe, Bumgarner, Craigo, Fry, Given, Holt, Knight, Martin (27th Dist.), Murenksy, Seacrist, Slack, Stephens, Theiling, Vennari, Williams, Worden, Faircloth, Goldsmith, Harman (32nd Dist.), McKinley and Stemple.

Health and Welfare

Schifano (Chairman), Ketchum (Vice Chairman), Ballouz, Blatnik, Craigo, Crookshanks, Davis, Givens, Goff, Hagedorn, Harden, Hartman, Knight, Steptoe, Smith, Theiling, Vennari, Wehrle, Williams, Worden, Conley, Harman (33rd Dist.), Otte, Springston and Wellman.

Industry and Labor

Wiedebusch (Chairman), Starcher (Vice Chairman), Blackwell, Bledsoe, Damron (13th Dist.), Davis, Gilliam, Gvoyich, Holmes, Holt, Jennings, Kidd, Kopp, Knight, Moore, Riffle, Simpkins, Slack, Whitlow, Yanni, Atkinson, Carmichael, Goldsmith, McKinley and Prunty.

Interstate Cooperation

Wooton (Chairman), Brenda, Gilliam, Kopp, Whitlow, Harman (33rd Dist.) and Swann. (Speaker is ex officio nonvoting member).

Judiciary

Albright (Chairman), Tucker (Vice Chairman), Chambers, Crookshanks, Damron (10th Dist.), Damron (13th Dist.), Gilliam, Gvoyich, Hatcher, Kopp, Martin (30th Dist.), Martin (35th Dist.), Moore, Schifano, Shepherd, Shingleton, Steptoe, Whitlow, Wiedebusch, Wooton, Atkinson, Carmichael, Green, Harman (33rd Dist.) and Shaffer.

Political Subdivisions

Stephens (Chairman), Yanni (Vice Chairman), Bumgarner, Burdette, Cook, Hendricks, Hutchinson, Karras, Kidd, Martin (27th Dist.), Mathis, McCormick, Murenksy, Seacrist, Shepherd, Shuman, Smith, Theiling, Wiedebusch, Wooton, Carmichael, Harman (32nd Dist.). Rogers, Stemple and Wells.
**Roads and Transportation**

Blackwell (Chairman), Gvoyich (Vice Chairman), Barley, Bledsoe, Bumgarner, Burke, Chambers, Crookshanks, Dalton, Givens, Hagedorn, Hatcher, Jordan, Holt, Martin (30th Dist.), Murensky, Pridemore, Seacrist, Simpkins, Trimboili, Prunty, Shanbrotz, Stemple, Swann and Wellman.

**Rules**

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

**JOINT COMMITTEES**

**Enrolled Bills**

Whitlow (Chairman), Holmes (Vice Chairman), Anello, Faircloth and Otte.

**Government and Finance**

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

**Joint Rules**

See (Chairman ex officio), Tompkins and Teets.

**Legislative Rule-Making**

**Review Committee**

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

**COMMISSION ON SPECIAL INVESTIGATIONS**

See (Chairman), Sattes, Tucker, Harman (33rd Dist.) and Teets.

**SELECT COMMITTEE**

**Redistricting**

Damron (10th Dist.) (Chairman), Chambers (Vice Chairman), Albright, Brenda, Damron (13th Dist.), Fry, Gilliam, Harden, Hendricks, Polan, Schifano, Shepherd, Stephens, Shiflet, Shingleton, Shuman, Wiedebusch, Wooton, Worden, Tucker, Carmichael, Greer, Harman (33rd Dist.), Swann and Teets.
AN ACT to amend and reenact sections six and seven, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to distribution of amounts recovered or awarded in actions for wrongful death; and providing for distribution to illegitimate persons in certain cases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

§55-7-7. Compromise of claim for death by wrongful act.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

(a) Every such action shall be brought by and in the name of the personal representative of such deceased person who has been duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, and the amount recovered in every such action shall be recovered by said personal representative and be distributed in accordance herewith. If the personal representative was duly appointed in another state, territory
or district of the United States, or in any foreign country, such personal representative shall, at the time of filing of the complaint, post bond with a corporate surety thereon authorized to do business in this state, in the sum of one hundred dollars, conditioned that such personal representative shall pay all costs adjudged against him and that he shall comply with the provisions of this section. The circuit court may increase or decrease the amount of said bond, for good cause.

(b) In every such action for wrongful death the jury, or in a case tried without a jury, the court, may award such damages as to it may seem fair and just, and, after making provision for those expenditures, if any, specified in subdivision (2), subsection (c) of this section, may direct in what proportion the remaining net damages shall be distributed to the surviving spouse and children, including adopted children, stepchildren and grandchildren of the deceased, and other persons, if any who were dependent upon the decedent for support, in whole or in part, or if there be none such, then to parents, bothers and sisters of the deceased, or if there be none such, then to such other persons, if any, entitled to inherit pursuant to the provisions of section one, article one, chapter forty-two of this code, unless the jury shall by its verdict allocate the remaining net amount in differing amounts and proportions among any surviving spouse, children, adopted children, stepchildren, grandchildren, other dependents, parents, brothers and sisters of the deceased. Where the matter was tried without a jury the court may find upon just and equitable principles that such net amount recovered should be distributed to such last named persons in different amounts and proportions, in which event the court shall make written findings of fact and then and there order such remaining net damages distributed to those persons in such amounts and proportions as the court finds to be fair, just and equitable.

(c) (1) The verdict of the jury shall include, but may not be limited to, damages for the following: (A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; (B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection,
48 care and assistance provided by the decedent; (C) expenses
49 for the care, treatment and hospitalization of the decedent
50 incident to the injury resulting in death; and (D) reasonable
51 funeral expenses.

52 (2) In its verdict the jury shall set forth separately the
53 amount of damages, if any, awarded by it for reasonable
54 funeral, hospital, medical and said other expenses incurred
55 as a result of the wrongful act, neglect or default of the
56 defendant or defendants which resulted in death, and any
57 such amount recovered for such expenses shall be so expended
58 by the personal representative.

59 (d) Every such action shall be commenced within two
60 years after the death of such deceased person. The provisions
61 of this section shall not apply to actions brought for the death
62 of any person occurring prior to the first day of July, one
63 thousand nine hundred eighty-two.

§55-7-7. Compromise of claim for death by wrongful act.

1 The personal representative of the deceased may compro-
2 mise any claim to damages arising under section five of this
3 article before or after action brought, with the consent of
4 the person or persons who would be entitled to the damages
5 recovered in an action therefor brought by such representative
6 under section six of this article; or if any such persons are
7 incapable from any cause of giving consent, the personal
8 representative may compromise with the approval of the
9 judge of the court wherein any such action has been
10 brought, or if none has been brought, with the consent of
11 the judge of the court wherein such action may be brought.
12 Such approval may be applied for by the personal representa-
13 tive, on petition to the judge in term or vacation, stating the
14 compromise, the terms thereof, and reasons therefor, and
15 convening the parties in interest. What is received by the
16 personal representative under the compromise shall be treated
17 as if recovered by him in an action under the section last
18 mentioned. When the judge acts in vacation, he shall return
19 all the papers in the case, and orders made therein, to the
20 clerk’s office of such court. The clerk shall file the papers
21 in his office as soon as received, and forthwith enter the
order in the order book on the law side of the court. Such orders, and all the proceedings in vacation, shall have the same force and effect as if made or had in term. Upon approval of the settlement, the court shall apportion and distribute such damages, or the settlement agreed upon, after making provisions for those expenditures, if any, specified in subdivision (2), subsection (c), section six of this article, in the same manner as in the cases tried without a jury and make written findings of fact and then and there order the remaining net damages distributed in such amounts and proportions as the court deems fair, just and equitable.

CHAPTER 2
(Com. Sub. for H. B. 1228—By Mr. Tucker and Mr. Hutchinson)
[Passed March 13, 1982; 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 twenty-eight, relating to reports concerning veterans who may have been exposed to certain chemical defoliants or herbicides or other causative agents and assistance to those veterans; providing definitions; reports made to West Virginia state department of health; reports by department of health; confidentiality of reports; physician or hospital to be immune from civil or criminal liability; attorney general authorized to represent veterans in class action suit; institution of assistance programs authorized if funding is available; providing dates for application by veterans; and termination of programs and duties of the department of health.

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 twenty-eight, to read as follows:
ARTICLE 28. ASSISTANCE TO KOREAN AND VIETNAM VETERANS EXPOSED TO CERTAIN CHEMICAL DEFOILIANTS OR HERBICIDES OR OTHER CAUSATIVE AGENTS, INCLUDING AGENT ORANGE.

§16-28-1. Definitions.

§16-28-2. Reports to the department of health.

§16-28-3. Reports by the department; studies on veterans; consent required.


§16-28-5. Immunity from liability.

§16-28-6. Class action representation by attorney general.

§16-28-7. Assistance programs.


§16-28-1. Definitions.

1 As used in this article, unless otherwise indicated by the context:

3 (1) "Veteran" means a person who was a resident of this state at the time of his induction into the armed forces of the United States of America, or was a resident of this state as of the thirty-first day of March, one thousand nine hundred eighty-one, who served in Vietnam, Cambodia or Laos during the Vietnam conflict, or who served in Korea during the Korean conflict;

10 (2) "Agent orange" means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid;

13 (3) "Department" means the West Virginia department of health; and

15 (4) "Director" means the director of the department of health.

§16-28-2. Reports to the department of health.

1 (a) A physician who has primary responsibility for treating a veteran who believes he may have been exposed to chemical defoliants or herbicides or other causative agents, including agent orange, while serving in the armed forces of the United States, shall, at the request of the veteran, submit a report to the department on a form provided by the
department. If there is no physician having primary responsibility for treating the veteran, the hospital treating the veteran shall, at the request of the veteran, submit the report to the department.

(b) The form provided by the department to the physician shall request the following information:

(1) Symptoms of the veteran which may be related to exposure to a chemical defoliant or herbicide or other causative agent, including agent orange;

(2) Diagnosis of the veteran; and

(3) Methods of treatment prescribed.

(c) The department may require the veteran to provide such other information as determined by the director.

§16-28-3. Reports by the department; studies on veterans; consent required.

(a) The department, in consultation and cooperation with a board-certified medical toxicologist, shall compile and evaluate information submitted under this article into a report to be distributed annually to members of the Legislature and to the veterans administration, the West Virginia department of veterans affairs and other veterans’ groups. The report shall contain current research findings on the effects of exposure to chemical defoliants or herbicides or other causative agents, including agent orange, and statistical information compiled from reports submitted by physicians or hospitals.

(b) The department, in consultation and cooperation with a board-certified medical toxicologist, shall conduct epidemiological studies on veterans who have cancer or other medical problems associated with exposure to a chemical defoliant or herbicide or any other causative agent, including agent orange, or who have children born with birth defects after the veteran’s suspected exposure to a chemical defoliant or herbicide or any other causative agent, including agent orange. The department must obtain consent from each veteran to be studied under this subsection. The department shall compile
and evaluate information obtained from these studies into a report to be distributed as provided by subsection (a) of this section.


The identity of a veteran about whom a report has been made under section two or three of this article may not be disclosed unless the veteran consents to the disclosure. Statistical information collected under this article is public information.

§16-28-5. Immunity from liability.

A physician or a hospital subject to this article who complies with this article may not be held civilly or criminally liable for providing the information required.

§16-28-6. Class action representation by attorney general.

The attorney general may represent a class of individuals composed of veterans who may have been injured because of contact with chemical defoliants or herbicides or other causative agents, including agent orange, in a suit for release of information relating to exposure to such chemicals during military service and for release of individual medical records.

§16-28-7. Assistance programs.

(a) The department of health, the West Virginia University school of medicine, the Marshall University school of medicine, and the West Virginia school of osteopathic medicine, shall institute a cooperative program to:

(1) Refer veterans to appropriate state and federal agencies for the purpose of filing claims to remedy medical and financial problems caused by the veterans' exposure to chemical defoliants or herbicides or other causative agents, including agent orange; and

(2) Provide veterans with fat tissue biopsies, genetic counseling and genetic screening to determine if the veteran has suffered physical damage as a result of substantial exposure to
13 chemical defoliants or herbicides or other causative agents, including agent orange.
15 (b) The director of the department of health shall adopt rules necessary to the administration of the programs authorized by this section.

1 Sections two and three of this article apply to all cases of veterans treated on or after the first day of January, one thousand nine hundred eighty-two, for symptoms typical of a person who has been exposed to a chemical defoliant or herbicide or any other causative agent, including agent orange. Sections six and seven of this article apply to all veterans.

1 If the director of the department of health determines that an agency of the federal government is performing the referral and screening functions required by section seven of this article, the director may discontinue any program required by this article or any duty required of a physician or hospital under this article.

CHAPTER 3
(H. B. 1806—By Mr. Tucker and Mr. Goff)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to giving the commissioner of agriculture the power to coordinate, establish and conduct a system of marketing agricultural products in this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-2. Duties and powers of commissioner.

1 In order to develop and encourage home industry and to protect and promote the interests of producers and provide consumers with food products of uniform grade and quality at fair and reasonable prices, it shall be the duty of the commissioner and he shall have authority to promote, regulate, coordinate, establish and conduct a system of marketing agricultural products in the state of West Virginia. He shall assist producers and handlers in the grading, classification and standardization of agricultural products at public markets, concentration points, packing, grading and processing plants and other places where agricultural products are assembled for distribution.

CHAPTER 4
(H. B. 1481—By Mr. Balloux)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-e, relating to the humane slaughter of livestock; definitions; commissioner to enforce article; rules and regulations; methods of humane slaughter; penalties; and severability.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen 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-e, to read as follows:

ARTICLE 2E. HUMANE SLAUGHTER OF LIVESTOCK.

§19-2E-1. Title.
§19-2E-1. Title.

This article shall be known by the short title of "The Humane Slaughter Act of 1982."

§19-2E-2. Declaration of purpose.

The purpose of this article is to restrict the methods used to slaughter cattle, sheep, swine and goats in commercial slaughtering establishments in West Virginia to those approved as humane techniques.


As used in this article:

(a) "Commercial slaughtering establishments" means a person engaged for profit in this state in the business of slaughtering or dressing animals for human consumption which are to be sold or offered for sale through a commercial outlet or establishment;

(b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives;

(c) "License" means any person licensed under the provisions of article two-b, chapter nineteen of the code of West Virginia;

(d) "Person" means any individual, partnership, corporation, association, fiduciary or other group of persons whether organized or not;

(e) "Livestock" means cattle, swine, sheep or goats.

§19-2E-4. Commissioner to enforce article; rules and regulations; effective date.

The commissioner shall administer and enforce the pro-
visions of this article and shall have authority to issue regu-
lations, after a public hearing, following due notice to all
interested persons in conformance with the provisions of the
state administrative procedures as set forth in chapter twenty-
nine-a of this code, to carry out the provisions of the article.
Commercial slaughtering facilities shall be in compliance with
the provisions of this article within six months after the
effective date of the article.


(a) Livestock, before being shackled, hoisted, thrown, cast
or cut must be rendered insensible to pain by a single
blow, gunshot or by electrical, chemical or other means that
is safe, rapid and effective; or

(b) By slaughtering in accordance with the ritual require-
ments of the Jewish faith or any other religious faith that
prescribes a method of slaughter by the simultaneous and
instantaneous severance of the carotid arteries with a sharp
instrument as well as handling techniques in connection with
such slaughtering; or

(c) By slaughtering in accordance with any method of
humane slaughter approved by the United States department
of agriculture.

§19-2E-6. Penalties.

Any person violating any provision of this article or
regulations adopted hereunder shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
less than one hundred dollars nor more than five hundred
dollars, and for the second offense, shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be fined not
less than five hundred dollars nor more than one thousand
dollars and shall have the license to do business as a slaughter-
ing establishment, under article two-b, chapter nineteen of
the code of West Virginia, suspended until the facility is in
compliance with the provisions of this article.

§19-2E-7. Severability.

If any provision of this article or the application there-
2 of to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of the article are declared to be severable.

CHAPTER 5

(H. B. 2020—By Mrs. Neal and Mr. Harden)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to the declaration of public policy and legislative intent; providing for the protection and preservation of agricultural production and practices; protection of agricultural operations and temporary changes thereof; definition and qualification of adverse uses relating to agricultural land use; and duties of landowners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.

§19-19-1. Purpose; public policy.
§19-19-4. Agriculture not adverse; limitation of actions.
§19-19-5. Duties of owner or operator maintained.

§19-19-1. Purpose; public policy.

WHEREAS, Agricultural production of food and fiber is a basic necessity to sustain human life, and essential to the general welfare and stability of this state and the citizens thereof, and the continued conduct of the utilization of land in the conduct of agricultural production, including woodland
and forestry production, is a necessity to the welfare and
common good of all of the citizens of this state; and,

Whereas, The infringement upon agricultural lands and
agricultural operations by other uses and occupancies which
are either adverse or incompatible with the continued agric-
cultural utilization may be of such nature as to endanger
orderly agricultural production, it is hereby declared to be
the public policy of this state that agricultural production
and the utilization of land in agricultural productive opera-
tions be protected and preserved.


For the purposes of this article:

(a) "Agriculture" shall mean the production of food, fiber
and woodland products, by means of cultivation, tillage of
the soil and by the conduct of animal, livestock, dairy, apiary,
equine or poultry husbandry, and the practice of forestry, sylvi-
culture, horticulture, or any other plant or animal production
and all farm practices related, usual or incidental thereto,
including the storage, packing, shipping and marketing, but
not including any manufacturing, milling or processing of such
products by other than the producer thereof.

(b) "Agricultural land" shall mean not less than five acres
of land and the improvements thereupon, used or usable in
the production of food, fiber or woodland products of an
annual value of one thousand dollars, or more, by the conduct
of the business of agriculture, as defined in subsection (a) of
this section.


The change of agricultural land use to a differing agricultural
use, including rotation or lying fallow from time to time, shall
not constitute abandonment as agricultural land or limit the
change to any other agricultural use.

19-19-4. Agriculture not adverse; limitation of actions.

The conduct of agriculture upon agricultural land shall
not be deemed adverse to other use or uses of adjoining or
neighboring land, whether such other land be used or occupied
for residential, commercial, business or for governmental, or any uses other than agricultural. No complaint or right of action shall be maintained in any court of this state against the owner or operator of agricultural lands adverse to the conduct of agriculture upon agricultural lands, unless:

1. The complainant's use and occupancy of lands of the complainant has existed upon his adjoining or neighboring land before the agricultural operation complained of upon the agricultural land; and

2. The conduct of such agricultural operation complained of has caused or will cause actual physical damage to the person or property of the owner or occupant of such adjoining or neighboring lands.

§19-19-5. Duties of owner or operator maintained.

Nothing in this article shall be construed to excuse or relieve the owner or operator of any agricultural lands from any other right or duty as to any other person or persons, and shall apply only to the right to conduct the practice of agriculture upon his agricultural lands, and the rights and duties of such owner or operator shall be in all other respects maintained as to any other person or persons or entity.

CHAPTER 6
(S. B. 459—By Mr. Staggers, Mr. Shaw and Mr. Jones)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six, relating to the establishment of the "General John McCausland Memorial Farm"; creating a revolving fund for its operation.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen 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-six, to read as follows:

ARTICLE 26. GENERAL JOHN McCAusLAND MEMORIAL FARM.

§19-26-1. Establishment; name; management.

§19-26-2. Special fund created; payment into fund; disbursement from fund.

§19-26-1. Establishment; name; management.

The General John McCausland Memorial Farm is hereby established. Situate on the southern side of Kanawha River in Arbuckle District and on the northern side of Kanawha River in Lewis and Cooper Districts, Mason County, this farm shall be managed by the commissioner of agriculture or his designated representative in accordance with the provisions of this chapter. The commissioner of agriculture may lease or assign the farm to any other West Virginia governmental agency or spending unit.

§19-26-2. Special fund created; payment into fund; disbursement from fund.

For the operation of the General John McCausland Memorial Farm, there is hereby created in the state treasury a special revolving fund to be known as the "General John McCausland Memorial Farm Fund." This fund shall consist of appropriations made by the Legislature, funds derived from the sale of farm and dairy products and other revenues from the memorial farm, and any funds or other property donated to the memorial fund. These funds shall be expended for farm operations, repairs, improvements or perpetuation of the memorial. The special revenue revolving account shall be part of the annual state budget.

CHAPTER 7

(S. B. 671—By Mr. Williams)

(Passed March 12, 1982; in effect July 1, 1982. Approved by the Governor.)

AN ACT to amend and reenact sections nine-a and nineteen-a, article three, chapter sixty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all relating to the transfer of funds from the alcoholic beverage control commissioner to the special fund for state building revenue bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9a. Additional price increase for payment of Korean veterans bonus bonds, state building revenue bonds and Vietnam veterans bonus bonds.

§60-3-19a. Payment into veterans bonus sinking fund for retirement of Korean veterans bonus bonds; payment into special fund for retirement of state building revenue bonds; and payment into veterans bonus sinking fund for retirement of Vietnam veterans bonus bonds.

§60-3-9a. Additional price increase for payment of Korean veterans bonus bonds, state building revenue bonds and Vietnam veterans bonus bonds.

1 For the purpose of providing revenue for the payment of bonds issued under and by virtue of said “Korean Veterans Bonus Amendment” of one thousand nine hundred fifty-six, the commissioner in the exercise of his authority under section nine of this article is hereby directed to increase the price of alcoholic liquors in addition to the price increase provided in said section nine hereof, on or before the last day of June, one thousand nine hundred fifty-seven, in an amount sufficient to produce an additional revenue of one million eight hundred thousand dollars on an annual volume of business equal to the average for the last three years. Whenever in any fiscal year the amount of money accumulated in the veterans bonus sinking fund for the retirement of Korean veterans bonus bonds shall be sufficient to pay at maturity all outstanding bonus bonds issued under said “Korean Veterans Bonus Amendment” of one thousand nine hundred fifty-six, together with the interest
due or payable thereon, then the commissioner is hereby
directed to continue in effect the aforesaid price increase
of alcoholic liquors and further increase the same as
necessary for such continued increase together with such
further increase to equal an amount sufficient to provide
revenue of two hundred fifty thousand dollars on an an-
nual volume of business equal to the average for the last
three years for the purpose of providing revenue to be
paid into a special fund hereby created in the office of the
state treasurer for the purpose of the payment of prin­
cipal and interest on bonds of the state known as the "State
Building Revenue Bonds," and for which payment, to the
extent that the state building commission of West Vir­
ginia has available space in buildings operated by it in
excess of revenue-producing uses, said commissioner shall
provide at its established rates and charges such available
excess space for use by such officers, departments or agen­
cies of the state as the commissioner of finance and ad­
ministration or such other officer, agency or department
as shall from time to time have the duty to arrange for
office space for officers, departments or agencies of the
state, shall specify.

For the purpose of providing revenue for the payment
of any bonds issued under and by virtue of the "Vietnam
Veterans Bonus Amendment" of one thousand nine hun­
dred seventy-three, the commissioner is hereby directed,
on and after the fifteenth day of April, one thousand nine
hundred seventy-five, to continue in effect all prior price
increases of alcoholic liquors with the excess revenues
generated from such continued price increases constitut­
ing additional charges or increases, such prices otherwise
being subject to reduction but for such continuation; and
further increase prices if necessary after consideration of
all revenue requirements and obligations as set forth in
this article, including the revenue requirement and obli­
gation herein provided, so as to equal an amount sufficient
to provide for full payment of all interest and principal
payments as the same shall accrue, on an annual volume
of business equal to the average for the last three years;
and such additional charges or price increases so col-
lected shall be irrevocably dedicated for the payment of
principal of and interest on such Vietnam veterans bonus
bonds until such bonds are finally paid and discharged.
Whenever in any fiscal year the amount of money ac-
cumulated in the special fund for the retirement of the
state building revenue bonds shall be sufficient to pay
at maturity all outstanding state building revenue bonds,
together with the interest due or payable thereon, and
the amount of money accumulated in the veterans bonus
sinking fund for the retirement of Vietnam veterans
bonus bonds shall be sufficient to pay at maturity all
outstanding bonus bonds issued under said "Vietnam
Veterans Bonus Amendment" of one thousand nine
hundred seventy-three, together with the interest due
or payable thereon, the provision herein made for con-
tinuing in effect the aforesaid price increases and the
provision herein for a further price increase shall be-
come ineffective at the end of such fiscal year.

§60-3-19a. Payment into veterans bonus sinking fund for
retirement of Korean veterans bonus bonds; payment into
special fund for retirement of state
building revenue bonds; and payment into
veterans bonus sinking fund for retirement of
Vietnam veterans bonus bonds.

1 On and after the first day of July, one thousand nine
2 hundred fifty-seven, from receipts in excess of the re-
3 quirements of the operating fund of the commissioner,
4 the sum of four hundred fifty thousand dollars shall,
5 upon requisition of the governor, be paid each quarter
6 into the veterans bonus sinking fund to be used for the
7 purpose of retiring bonds issued under said "Korean
8 Veterans Bonus Amendment" of one thousand nine hun-
9 dred fifty-six. Whenever, in any fiscal year, the amount
10 of money accumulated in the veterans bonus sinking fund
11 for the retirement of said Korean veterans bonus bonds
12 shall be sufficient to pay at maturity all outstanding
13 bonus bonds issued under the "Korean Veterans Bonus
14 Amendment" of one thousand nine hundred fifty-six,
15 together with interest due or payable thereon, no further
transfer to such sinking fund shall be made after the end of such fiscal year. Thereafter, from receipts in excess of the requirements of the operating fund of the commissioner, the sum of two hundred fifty thousand dollars shall be paid by the commissioner by the end of the first quarter of each fiscal year into the special fund created in section nine-a of this article for the purpose of retiring bonds of the state known as the “State Building Revenue Bonds.” It shall be the duty and responsibility of the state treasurer to pay the principal and interest on said bonds as they become due and payable. Whenever, in any fiscal year, the amount of money accumulated in the special fund for the retirement of said “State Building Revenue Bonds” is sufficient to pay at maturity all of the outstanding bonds, together with interest due or payable thereon, no further transfers to such special fund shall be made after the end of such fiscal year.

On and after the fifteenth day of April, one thousand nine hundred seventy-five, from receipts in excess of the requirements of the operating fund of the commissioner, the amount sufficient to provide for full payment of all interest and principal as the same shall accrue, shall, upon requisition of the governor, be paid each quarter into the veterans bonus sinking fund to be used for the purpose of retiring bonds issued under said “Vietnam Veterans Bonus Amendment” of one thousand nine hundred seventy-three. Whenever, in any fiscal year, the amount of money accumulated in the veterans bonus sinking fund for the retirement of said Vietnam veterans bonus bonds shall be sufficient to pay at maturity all outstanding bonus bonds issued under the “Vietnam Veterans Bonus Amendment” of one thousand nine hundred seventy-three, together with interest due and payable thereon, no further transfer to such sinking fund shall be made after the end of such fiscal year.

Nothing in section nine-a of this article or in this section nineteen-a contained shall be taken as limiting the power and authority of the Legislature to at any time appropriate the aforesaid receipts for some other purpose than the special fund for the retirement of said “State
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 eighty-two, to the Department of Welfare, Account No. 4050, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 1982, 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 appropriations during the fiscal year 1981-82, 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. 4050, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 HEALTH AND WELFARE
4 56—Department of Welfare
5 Acct. No. 4050
6 10 Medical Services $ 1,000,000
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year of 1981-82. Such amount shall be available for expenditure immediately upon the effective date of the bill.

CHAPTER 9
(S. B. 225—Originating in the Committee on Finance)

[Passed February 3, 1982; 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 eighty-two, to the Department of Agriculture, Account No. 5100, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 1982, wherein is set forth the revenues and expenditures of the state fund, general revenue, including fiscal year 1981-82; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the General Revenue Fund available for further appropriation during fiscal year 1981-82, 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. 5100, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding the following sum to the designated new line item:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

AGRICULTURE

79—Department of Agriculture

Acct. No. 5100

6a Administration Building $125,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and new item therein for expenditure in the current fiscal year 1981-82. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 10

(H. B. 1523—By Mr. Polan)

[Passed February 17, 1982; 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 funds remaining unappropriated from the Revenue Sharing Trust Fund for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, to the State Department of Highways, Account No. 9705, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an Executive Budget Document, dated January 13, 1982, which included a current financial statement of the state fund, revenue sharing trust fund; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the revenue sharing trust fund available for further appropriation during the fiscal year 1981-1982, 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. 9705, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding thereto the following new line item, and language of appropriation:

**TITLE 2. APPROPRIATIONS.**

**Section 6. Appropriations from revenue sharing trust fund.**

137—Revenue Sharing Trust Fund

Department of Highways

Acct. No. 9705

2 Federal matching funds $1,600,000.

The purpose of this supplementary appropriation bill is to supplement the aforesaid account with a new line item and language of appropriation, the amount of the same being available for expenditure in fiscal year 1981-1982 upon the effective date of the bill.

**CHAPTER 11**

(Com. Sub. for H. B. 1651—By Mr. Harden)

[Passed March 6, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3760, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3760, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, be supplemented, amended and transferred to read as follows:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

CORRECTIONS

51—Huttonsville Correctional Center

Acct. No. 3760

<table>
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<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,180,977</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,206,305</td>
</tr>
</tbody>
</table>

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

CHAPTER 12

(Com. Sub. for H. B. 1610—By Mr. Harden)

[Passed March 6, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections, Account No. 3680, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3680, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, be supplemented, amended and transferred to read as follows:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

CORRECTIONS

43—Department of Corrections

Acct. No. 3680

2 Other Personal Services $ 452,748
3 Current Expenses 185,436

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

CHAPTER 13

(H. B. 1598—By Mrs. Neal)

[Passed February 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the State Health Department—Mental Hospitals, Account No. 4160, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4160, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, be supplemented, amended and transferred to read as follows:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HEALTH AND WELFARE

59—State Health Department—Mental Hospitals

Acct. No 4160

1 1 Personal Services ........................................... $20,020,229
2 2 Current Expenses ............................................ 5,855,919
3 3 Repairs and Alterations ................................. 369,626

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to other items of such appropriation for the designated spending unit, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the current fiscal year one thousand nine hundred eighty-two, shall be made available for expenditure upon the effective date of this bill.

CHAPTER 14

(H. B. 1319—By Mr. Polan)

[Passed February 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Adjutant General-State Militia, Account No. 5800, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation Account No. 5800, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, be supplemented, amended and transferred to read as follows:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

PROTECTION

91—Adjutant General—State Militia

Acct. No. 5800

7 Property Maintenance $869,827
9 College Education Fund 145,733

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

CHAPTER 15

(H. B. 1524—By Mr. Polan)

[Passed February 17, 1982; 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. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-one, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, 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. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-two, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-one, supplementing chapter one, acts of the Legislature, first extraordinary
session, one thousand nine hundred eighty-one, known as the budget bill, be further supplemented, amended and transferred to read as follows:

TITLE 2. APPROPRIATIONS.

Section 2. Appropriations from other funds.

111—State Department of Highways

Acct No. 6700

TO BE PAID FROM STATE ROAD FUND

Maintenance Expressway, Trunkline and Feeder $59,800,000
Maintenance, State Local Services 43,985,000
Inventory Revolving 1,650,000
Equipment Revolving 4,400,000
General Operations 16,000,000
Debt Service 87,900,000
Interstate Construction 157,907,000
Other Federal Aid Programs 77,285,000
Appalachian Program 39,000,000
Nonfederal Aid Construction 11,400,000

Total $499,327,000

The purpose of this bill is to supplement, amend and transfer certain moneys from items of existing appropriations to other items of such appropriations for the designated spending unit, and to reflect the total spending authority of the spending unit for the 1981-1982 fiscal year, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure in such fiscal year shall be available for expenditure upon the effective date of this bill.

CHAPTER 16

(S. B. 224—Originating in the Committee on Finance)

[Passed February 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue, of the state cer-
tain unexpended and unencumbered amounts of an item of the existing appropriation of the Legislature—Senate, Account No. 1010, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation of Account No. 1010, including item one thereof, appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue, of the state by reducing the sum for such designated line item, formerly three hundred two thousand five hundred dollars, by one hundred twenty-five thousand dollars, with such line item to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 LEGISLATIVE

4 1—Senate

5 Acct. No. 1010

6 1 Compensation of Members .................. $177,500

7 The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, one hundred twenty-five thousand dollars of the unexpended and unencumbered moneys in the existing appropriation to line item one thereof of the Senate, Account No. 1010. Such amount shall be immediately expired into the state fund, general revenue and available for other appropriation upon the effective date of this bill.
AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of an item of the existing appropriation of the Governor's office—Civil Contingent Fund—Account No. 1240, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation of Account No. 1240, including all reappropriated balances, appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, by reducing the sum of such designated reappropriated item—1240-08, by one million dollars, with such account to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor’s Office—Civil Contingent Fund

4 Acct. No. 1240

5 Unclassified—Total ............................................ $ 1,000,000

6 Of the appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000 as West Virginia's contribution to the Interstate Oil Compact Commission.

10 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1980-81 is hereby appropriated for expenditure during the fiscal year 1981-82, except for item 1240-08 Southern West Virginia Flood
Disaster—Housing Program—Prior Year—which shall be reduced by one million dollars immediately expired into the state fund, general revenue.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, one million dollars of the unexpended and unencumbered moneys in the existing appropriation to the Governor’s Civil Contingent Fund. Such amount shall be immediately expired into the state fund, general revenue, and available for other appropriation upon the effective date of this bill.

CHAPTER 18
(S. B. 675—Originating in the Committee on Finance)

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the existing appropriation of the Treasurer’s Office—School Building Sinking Fund, Account No. 1650, as appropriated by the reappropriation language under such account in chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That fifty-one thousand dollars of the unexpended and unencumbered balances, prior appropriated or transferred to Account No. 1650-06 and subsequently brought forward to the existing appropriation of Account No. 1650 by the language of reappropriation under such existing account, and as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, with
the language of reappropriation under such account to thereafer read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

EXECUTIVE

4 14—Treasurer's Office—School Building Sinking Fund

5 Acct. No. 1650

6 Any unexpended balance remaining in the appropriation for “Treasurer's Office—School Building Sinking Fund” at the close of the fiscal year 1980-81 is hereby reappropriated for expenditure during the fiscal year 1981-82, except that such reappropriations shall be reduced by fifty-one thousand dollars which is hereby caused to be immediately expired into the state fund, general revenue of the state, and be available for other appropriation upon the effective date of this bill.

15 The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, fifty-one thousand dollars of the unexpended and unencumbered moneys formerly reappropriated by the language of reappropriation in the existing account of the Treasurer's Office—School Building Sinking Fund, Acct. No. 1650. Such amount shall be immediately expired into the state fund, general revenue, and available for other appropriation upon the effective date of this bill.

CHAPTER 19

(S. B. 677—Originating in the Committee on Finance)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the
existing appropriation of Item V of Section four, Title II of the one thousand nine hundred seventy-three budget act, as appropriated by the reappropriation language in Section four, Title II in chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That all of the unexpended and unencumbered balances, of Item V of Section four, Title II of the one thousand nine hundred seventy-three budget act subsequently brought forward to the existing appropriation of Section four, Title II as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, with the language of reappropriation under such section to thereafter read as follows:

1

TITLE 2. APPROPRIATIONS.

2 Section 4. Reappropriations—Any unexpended balances of Items V, VI and IX, in the appropriations made by and under the authority of Sec. 4, Title II of the 1972 Budget Act, and amended under Sec. 4, Title II of the 1977 Budget Act, are hereby reappropriated for expenditure during the fiscal year 1981-82, with exception of the following accounts: Item V, Sec. 4, Title II of the 1972 Budget Act, Acct. No. 1251-10.

10 Any unexpended balances of Items XII, XIII and XV in the appropriations made by and under the authority of Sec. 4, Title II of the 1973 Budget Act and amended under Sec. 4, Title II of the 1977 Budget Act, are hereby reappropriated for expenditure during the fiscal year 1981-82 with exception of the following accounts: Item XIII, Acct. Nos. 4321-20 and 4321-21.

17 Any unexpended balances of Items I, in the appropriation made by and under Sec. 4, Title II of the 1976 Budget Act are hereby reappropriated for expenditure during the fiscal year 1981-82.
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, the unexpended and unencumbered moneys formerly reappropriated by the language of reappropriation in the existing Section four, Title II of the one thousand nine hundred eighty-two budget bill. Such amount shall be immediately expired into the state fund, general revenue, and available for other appropriation upon the effective date of this bill.

CHAPTER 20
(Com. Sub. for H. B. 1150—By Mr. Speaker, Mr. See)

Passed March 3, 1982; in effect from passage.
Became law without the approval of 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
2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.

1 Section 1. General policy.—The purpose of this act is to appropriate money necessary for economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred eighty-three.
Sec. 2. Definitions.—For the purpose of this act: "Governor" shall mean the Governor of the State of West Virginia.

"Spending unit" shall mean the department, agency or institution to which an appropriation is made.

The "fiscal year one thousand nine hundred eighty-three" shall mean the period from July first, one thousand nine hundred eighty-two through June thirtieth, one thousand nine hundred eighty-three.

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

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

"Personal services" shall mean salaries, wages, and other compensation paid to full-time, part-time and temporary employees of the spending unit, but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.

From appropriations made to the spending units of state government, there may be transferred upon approval of the Governor to a special account an amount sufficient to match federal funds under any federal act.

Unless otherwise specified, appropriations for personal services shall include salaries of heads of spending units.

"Current expenses" shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands.

"Equipment" shall mean equipment items which have an
appreciable and calculable period of usefulness in excess of one year.

"Repairs and alterations" shall mean repairs to structures and improvements to property which do not increase the capital assets.

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

"Lands" shall mean the purchase of real property or interest in real property.

"Capital outlay" shall mean and include buildings, lands, or buildings and lands, with such category or item of appropriation to remain in effect as provided by Chapter 12, Article 3, Section 12 of the Code of West Virginia.

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above.

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

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

Sec. 5. Maximum expenditures.—No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this act.

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.
### Appropriations

#### Agriculture
- Department of agriculture—Acct. No. 5100
- Department of agriculture (agricultural awards)—Acct. No. 5150
- Department of agriculture (division of rural resources)—Acct. No. 5130
- Department of agriculture (meat inspection)—Acct. No. 5140
- Department of agriculture (soil conservation committee)—Acct. No. 5120
- Farm management commission—Acct. No. 5110

#### Business and Industrial Relations
- Bureau of labor and department of weights and measures—Acct. No. 4500
- Department of banking—Acct. No. 4800
- Department of mines—Acct. No. 4600
- Interstate commission on Potomac river basin—Acct. No. 4730
- Ohio river valley water sanitation commission—Acct. No. 4740
- State boxing commission—Acct. No. 4790
- West Virginia air pollution control commission—Acct. No. 4760
- West Virginia nonintoxicating beer commissioner—Acct. No. 4900
- West Virginia racing commission—Acct. No. 4950
- West Virginia state aeronautics commission—Acct. No. 4850

#### Corrections
- Anthony Center—Acct. No. 3690
- Davis Center—Acct. No. 3710
- Department of corrections—Acct. No. 3680
- Department of corrections (parole services)—Acct. No. 3660
- Department of corrections (probation and parole)—Acct. No. 3650
- Department of corrections (work release centers)—Acct. No. 3670
- Huttonsville Correctional Center—Acct. No. 3760
- West Virginia industrial home for youth—Acct. No. 3720
- West Virginia industrial school for boys—Acct. No. 3700
- West Virginia penitentiary—Acct. No. 3750
- West Virginia state prison for women—Acct. No. 3740

#### Conservation and Development
- Department of natural resources—Acct. No. 5650
- Geological and economic survey—Acct. No. 5200
- Public land corporation—Acct. No. 5660
- Water development authority—Acct. No. 5670
- West Virginia railroad maintenance authority—Acct. No. 5690

#### Educational
- Department of culture and history—Acct. No. 3510
- Department of education—Acct. No. 2860
- Department of education (aid for exceptional children)—Acct. No. 2960
- Educational broadcasting authority—Acct. No. 2910
- Marshall University (medical school)—Acct. No. 2840
- State board of education (vocational division)—Acct. No. 2940
- State board of education (vocational division)—Acct. No. 2890
- State department of education (state aid to schools)—Acct. No. 2950
State department of education (school lunch program)—Acct. No. 2870
State department of education (teacher education centers)—Acct. No. 2770
State FFA-FHA camp and conference center—Acct. No. 3360
Teachers retirement board—Acct. No. 2980
West Virginia board of regents—Acct. No. 2800
West Virginia board of regents (control)—Acct. No. 2790
West Virginia college of osteopathic medicine—Acct. No. 2810
West Virginia library commission—Acct. No. 3500
West Virginia schools for the deaf and the blind—Acct. No. 3330
West Virginia University (medical school)—Acct. No. 2850

EXECUTIVE

Governor’s office—Acct. No. 1200
Governor’s office (civil contingent fund)—Acct. No. 1240
Governor’s office (custodial fund)—Acct. No. 1230
Governor’s office (disaster relief-matching)—Acct. No. 1260
Office of economic and community development—Acct. No. 1210
Office of emergency services—Acct. No. 1300

FISCAL

Auditor’s office (general administration)—Acct. No. 1500
Auditor’s office (social security)—Acct. No. 1510
Auditor’s office (unemployment compensation)—Acct. No. 1520
Department of finance and administration—Acct. No. 2100
Municipal bond commission—Acct. No. 1700
State board of insurance—Acct. No. 2250
State tax department—Acct. No. 1800
State tax department (homestead property tax exemption)—Acct. No. 1810
Treasurer’s office—Acct. No. 1600
Treasurer’s office (school building sinking fund)—Acct. No. 1650

HEALTH AND WELFARE

Andrew S. Rowan memorial home—Acct. No. 4270
Colin Anderson Center—Acct. No. 4190
Commission for the blind—Acct. No. 4450
Denmar state hospital—Acct. No. 4320
Department of veterans affairs—Acct. No. 4040
Department of veterans affairs (veterans home)—Acct. No. 4010
Department of welfare—Acct. No. 4050
Fairmont emergency hospital—Acct. No. 4250
Greenbrier school for mentally retarded children—Acct. No. 4140
Hopemont state hospital—Acct. No. 4300
Pinecrest state hospital—Acct. No. 4310
Solid waste disposal—Acct. No. 4020
State board of education (rehabilitation division)—Acct. No. 4400
State commission on aging—Acct. No. 4060
State health department—Acct. No. 4000
State health department—mental hospitals—Acct. No. 4160
Welch emergency hospital—Acct. No. 4260
INCORPORATING AND RECORDING
Secretary of state—Acct. No. 2500

JUDICIAL
Supreme Court—General Judicial—Acct. No. 1110

LEGAL
Attorney general—Acct. No. 2400
Commission on uniform state laws—Acct. No. 2450

LEGISLATIVE
House of Delegates—Acct. No. 1020
Joint expenses—Acct. No. 1030
Senate—Acct. No. 1010

MISCELLANEOUS BOARDS AND COMMISSIONS
Human rights commission—Acct. No. 5980
Insurance commissioner—Acct. No. 6160
State fire commission—Acct. No. 6170
West Virginia civil service system—Acct. No. 5840
West Virginia public employees insurance board—Acct. No. 6150
West Virginia public employees retirement board—Acct. No. 6140
West Virginia public legal services council—Acct. No. 5900
Women’s commission—Acct. No. 6000

PROTECTION
Adjutant general (state militia)—Acct. No. 5800
Department of public safety—Acct. No. 5700

ROADS AND HIGHWAYS
State department of highways—Acct. No. 6410

§2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND
Auditor’s office (land department operating fund)—Acct. No. 8120
Board of regents (special capital improvement fund)—Acct. No. 8840
Board of regents (state system registration fee— revenue bond construction fund)—Acct. No. 8845
Board of regents (state system registration fee— special capital improvements fund—capital improvement and bond retirement fund)—Acct. No. 8835
Board of regents (state system tuition fee— revenue bond construction fund)—Acct. No. 8860
Board of regents (state system tuition fee— special capital improvement fund—capital improvement and bond retirement fund)—Acct. No. 8855
Board of regents (West Virginia University special capital improvement fund)—Acct. No. 8830
Department of agriculture—Acct. No. 8180
Department of finance and administration (division of purchasing—revolving fund)—Acct. No. 8140
§3. Supplemental and deficiency appropriations.
Governor's office—civil contingent fund—Acct. No. 1240
State health department—hospital services revenue account (special fund)
(capital improvement, renovation and operation)—Acct. No. 8491-12
West Virginia board of regents (control)—Acct. No. 2790


§5. Reappropriations.

§6. Appropriations from revenue sharing trust fund.
Department of corrections—Acct. No. 9719
Department of natural resources—Acct. No. 9725
Department of welfare—Acct. No. 9777
Office of economic and community development—Acct. No. 9721
State board of education—vocational division—Acct. No. 9780
Water development authority—Acct. No. 9743
West Virginia state aeronautics commission—Acct. No. 9785

§7. Reappropriations—Revenue sharing trust fund.

§8. Appropriations from countercyclical fiscal assistance trust fund.

§9. Special revenue appropriations.

§10. State improvement fund appropriations.

§11. Specific funds and collection accounts.

§12. Appropriations for refunding erroneous payments.


§15. Appropriations for local governments.

§16. Total appropriations.

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

LEGISLATIVE

1—Senate
Acct. No. 1010

<table>
<thead>
<tr>
<th>Description</th>
<th>Fiscal Year 1982-1983</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$302,500</td>
</tr>
<tr>
<td>Compensation and per diem of officers and employees</td>
<td>910,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>275,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>335,000</td>
</tr>
<tr>
<td>Printing Blue Book</td>
<td>175,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>100,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,097,500</td>
</tr>
</tbody>
</table>

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

The appropriations for the Senate for the fiscal year 1981-82 are to remain in full force and effect, and are hereby re-appropriated to June 30, 1983.

Any balances so reappropriated may be transferred and credited to the 1982-83 accounts.

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

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

The Clerk of the Senate with written approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session.

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

For duties imposed by law and the Senate, the Clerk of the Senate shall be paid a monthly salary as provided in Senate resolution adopted January 1982, and payable out of the amount appropriated for Compensation and per diem of Officers and Employees.

2—House of Delegates

Acct. No. 1020

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$750,000</td>
</tr>
<tr>
<td>Compensation and per diem of officers and</td>
<td></td>
</tr>
<tr>
<td>employees</td>
<td>$590,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$450,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$750,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,540,000</td>
</tr>
</tbody>
</table>

The appropriations for the House of Delegates for the
fiscal year 1981-82 are to remain in full force and effect,
and are hereby reappropriated to June 30, 1983.

Any balances so reappropriated may be transferred and
credited to the 1982-83 accounts.

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

The Clerk of the House of Delegates, with the approval
of the Speaker, is authorized to draw his requisitions up-
on the Auditor, payable out of the Contingent Fund of the
House of Delegates, for any bills for supplies and services
that may have been incurred by the House of Delegates,
and not included in the appropriation bill, for bills, for
services and supplies incurred in preparation for the open-
ing of the session and after adjournment, and for the neces-
sary operation of the House of Delegates offices, the re-
quition for the same to be accompanied by bills to be filed
with the Auditor.

The Speaker of the House of Delegates, upon approval
of the House Committee on Rules, shall have authority
to employ such staff personnel during and between sessions
of the Legislature as shall be needed, in addition to per-
sonnel designated in the House resolution, and the com-
pensation of all personnel shall be as fixed in such House
resolution, for the session, or fixed by the Speaker, with
the approval of the House Committee on Rules, during
and between sessions of the Legislature, notwithstanding
such House resolution. The Clerk of the House is hereby
authorized to draw requisitions upon the State Auditor,
payable from the Compensation and per diem of officers
and employees fund or the Current Expenses and Contin-
gent Fund of the House of Delegates for such services.

For duties imposed by law and by the House of Delegates,
including salary allowed by law as keeper of the rolls, the
Clerk of the House of Delegates shall be paid a monthly salary
as provided in the House resolution, unless increased between
sessions under the authority of the Speaker, with approval of
the House Committee on Rules, and payable from the Compensation and per diem of officers and employees item or the Current Expenses and Contingent Fund item of the House of Delegates.

3—Joint Expenses

Acct. No. 1030

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance</td>
<td>$2,032,791</td>
</tr>
<tr>
<td>To pay cost of Legislative Printing</td>
<td>$910,000</td>
</tr>
<tr>
<td>Other Legislative Committees</td>
<td>$50,000</td>
</tr>
<tr>
<td>Commission on Interstate Cooperation</td>
<td>$90,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,082,791</strong></td>
</tr>
</tbody>
</table>

The appropriation for Joint Expenses for the fiscal year 1981-82 are to remain in full force and effect and are hereby reappropriated to June 30, 1983. Any balances so reappropriated may be transferred and credited to the 1982-83 accounts.

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

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$13,837,896</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$2,536,054</td>
</tr>
<tr>
<td>Judges Retirement System</td>
<td>$750,000</td>
</tr>
<tr>
<td>Other Court Costs</td>
<td>$1,879,980</td>
</tr>
<tr>
<td>Judicial Training Program</td>
<td>$50,000</td>
</tr>
<tr>
<td>Mental Hygiene Fund</td>
<td>$225,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$19,278,930</strong></td>
</tr>
</tbody>
</table>

This appropriation shall be administered by the Administrative Director of the State Supreme Court of Appeals who shall draw his requisitions for warrants in payment in the form of payrolls, making deductions therefrom, as required by law, for taxes and other items.
The appropriation for Judges' Retirement System is to be transferred to the Judges' Retirement Fund, in accordance with the law relating thereto upon requisition of the Administrative Director of the State Supreme Court of Appeals.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

**EXECUTIVE**

5—*Governor's Office*

<table>
<thead>
<tr>
<th>Acct. No. 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Governor</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
</tr>
<tr>
<td>3 Current Expenses</td>
</tr>
<tr>
<td>4 Equipment</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

6—*Office of Economic and Community Development*

<table>
<thead>
<tr>
<th>Acct. No. 1210</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Current Expenses</td>
</tr>
<tr>
<td>3 Equipment</td>
</tr>
<tr>
<td>4 The Economic Development Loan Fund</td>
</tr>
<tr>
<td>5 Regional Council</td>
</tr>
<tr>
<td>6 A.R.C. Assessment</td>
</tr>
<tr>
<td>7 Partnership grants</td>
</tr>
<tr>
<td>8 Fire Departments</td>
</tr>
<tr>
<td>9 Civil Air Patrol</td>
</tr>
<tr>
<td>10 Aerial Markers</td>
</tr>
<tr>
<td>11 Coal Development</td>
</tr>
<tr>
<td>12 Milton Volunteer Fire Department—Capital Outlay</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in accounts “Federal State Coordination,” “Office of Criminal Justice and Highway Safety” and “Regional Council to match Federal Funds” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.
Any unexpended balance remaining in the account “Community Water Development Grants and Partnership Grants” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

Any unexpended balance remaining in accounts “Fire Departments”, “Emergency Assistance to Small Municipal and Public Service Districts Water and Sewage Systems” and “Flood” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

7—Governor’s Office—Custodial Fund

Acct. No. 1230

1 Unclassified—Total $ 327,363

To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions, and any additional household expenses occasioned by such official functions.

8—Governor’s Office—Civil Contingent Fund

Acct. No. 1240

1 Unclassified—Total $ 1,050,000

Of the appropriation there may be expended, at the discretion of the Governor, an amount not to exceed $1,000 as West Virginia’s contribution to the Interstate Oil Compact Commission.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

9—Governor’s Office—Disaster Relief-Matching

Acct. No. 1260

1 Unclassified—Total $ 0

To match and aid Federal Programs, and any part of this appropriation may be transferred to any department for such purposes.
10—Office of Emergency Services  
Acct. No. 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$195,970</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$41,437</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$5,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$242,407</strong></td>
</tr>
</tbody>
</table>

**FISCAL**

11—Auditor’s Office—General Administration  
Acct. No. 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of State Auditor</td>
<td>$39,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,369,378</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$605,354</td>
</tr>
<tr>
<td>Equipment</td>
<td>$39,699</td>
</tr>
<tr>
<td>Microfilm</td>
<td>$20,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,073,431</strong></td>
</tr>
</tbody>
</table>

12—Auditor’s Office—Social Security  
Acct. No. 1510

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>To match contributions of state employees for Social Security—Total</td>
<td><strong>$18,705,000</strong></td>
</tr>
</tbody>
</table>

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

Any unexpended balance remaining in the appropriation for “Auditor’s Office—Social Security” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

13—Auditor’s Office—Unemployment Compensation  
Acct. No. 1520

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total—Unclassified</td>
<td><strong>$1,000,000</strong></td>
</tr>
</tbody>
</table>
The above appropriation is intended to cover the states share of unemployment compensation costs for those spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workmen's Compensation Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the Unemployment Compensation cost for their respective divisions.

Should this appropriation be insufficient to meet the requirements of state spending units, from the General Revenue Fund, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the "Auditor's Office—Unemployment Compensation" any amounts required for that department for costs in excess of this appropriation.

14—Treasurer's Office

Acct. No. 1600

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of State Treasurer</td>
<td>$42,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>677,422</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>282,843</td>
</tr>
<tr>
<td>Equipment</td>
<td>30,000</td>
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<tr>
<td>Microfilm Program</td>
<td>8,894</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,041,159</strong></td>
</tr>
</tbody>
</table>

15—Treasurer's Office—School Building Sinking Fund

Acct. No. 1650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$16,826,500</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Treasurer's Office—School Building Sinking Fund" at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

16—Municipal Bond Commission

Acct. No. 1700

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$74,687</td>
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<tr>
<td>Current Expenses</td>
<td>15,705</td>
</tr>
<tr>
<td>Equipment</td>
<td>200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$90,592</strong></td>
</tr>
<tr>
<td></td>
<td>First Line</td>
</tr>
<tr>
<td>---</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Circuit Breaker Reimbursement</td>
</tr>
<tr>
<td>6</td>
<td>Other Expenses</td>
</tr>
<tr>
<td>7</td>
<td>Multi-State Tax Compact</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
</tr>
<tr>
<td>9</td>
<td>Any unexpended balance remaining in the appropriation for “Other Expenses”</td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
</tbody>
</table>

### 18—State Tax Department—Homestead Property Tax Exemption

<table>
<thead>
<tr>
<th></th>
<th>First Line</th>
<th>Second Line</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Total—Unclassified</td>
<td>$ 3,633,783</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Funds to be disbursed in accordance with Chapter 11-6B-3 8 of the Code of West Virginia.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 19—Department of Finance and Administration

<table>
<thead>
<tr>
<th></th>
<th>First Line</th>
<th>Second Line</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 1,990,845</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>1,180,445</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>154,774</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>6,299</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Postage</td>
<td>1,247,500</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Utilities</td>
<td>600,000</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Public Transportation</td>
<td>315,000</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Fire Service Fee</td>
<td>227,675</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Building Equipment and Supplies</td>
<td>12,200</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>So. Regional Ed. Board</td>
<td>80,000</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Council of State Governments</td>
<td>37,300</td>
<td></td>
</tr>
</tbody>
</table>
12 National Governors Association .......................... 38,480

13 Total .................................................................. $ 5,890,518

14 The Workmen's Compensation Commission, Department of Welfare, Public Service Commission, Department of Natural Resources, Department of Motor Vehicles, State Department of Highways, State Health Department and State Tax Department—Income Tax Division shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service. Any spending unit operating from Special Revenue or receiving reimbursement for postage costs from the federal government shall refund to the Postage account of the Department of Finance and Administration such amounts. Should this appropriation for postage be insufficient to meet the mailing requirements of the State spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for the department for postage in excess of this appropriation.

Any unexpended balance remaining in the “Postage Account” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

35 State Department of Highways shall reimburse the appropriation of the Department of Finance and Administration monthly for all actual expenses incurred pursuant to the provisions of Chapter 17, Article 2A, Section 13 of the Code of West Virginia.

20—State Board of Insurance

Acct. No. 2250

1 Personal Services .................................................. $ 77,335
2 Current Expenses .................................................. 25,477
3 Equipment ............................................................ 1,270
4 Premiums, Claims and Other Expenses .................. 4,101,590

5 Total .................................................................. $ 4,205,672
The above appropriation on line 4 is for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees for property, casualty and fidelity insurance for the various state agencies. Should this appropriation be insufficient to meet the requirements of the state spending units, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the Board of Insurance any amounts required for that department for costs in excess of this appropriation.

Any and all of the funds appropriated for "Premiums, Claims and Other Expenses" may be transferred to a special account for the payment of premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees.

Any or all of the funds appropriated for "Premiums, Claims and Other Expenses" may be transferred to a special account for disbursement for payment of premiums and insurance losses.

**LEGAL**

21—*Attorney General*

Acct. No. 2400

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Attorney General</td>
<td>$42,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,637,453</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$369,177</td>
</tr>
<tr>
<td>Equipment</td>
<td>$60,771</td>
</tr>
<tr>
<td>Publication of Reports and Opinions</td>
<td>$20,000</td>
</tr>
<tr>
<td>To Protect the resources or tax structure of the state in controversies or legal proceedings affecting same</td>
<td>$3,250</td>
</tr>
<tr>
<td>Consumer Protection</td>
<td>$262,955</td>
</tr>
<tr>
<td>Personal Services</td>
<td>$205,036</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$51,619</td>
</tr>
<tr>
<td>Equipment</td>
<td>$6,300</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,395,606</strong></td>
</tr>
</tbody>
</table>
When legal counsel or secretarial help is appointed by the Attorney General, for any state spending unit, this account shall be reimbursed from such unit's appropriated account in an amount agreed upon by the Attorney General and the proper authority of said spending unit.

Any unexpended balance remaining in the appropriation for "Publication of Reports and Opinions" at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

22—Commission on Uniform State Laws

Acct. No. 2450

1 Unclassified—Total ........................................ $ 12,000

2 To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING

23—Secretary of State

Acct. No. 2500

1 Salary of Secretary of State ............................... $ 36,000
2 Other Personal Services ...................................... 428,590
3 Current Expenses ............................................. 142,889
4 Equipment ....................................................... 25,505
5 Certification of Primary and General Elections .......... 4,950

6 Total ....................................................................... $ 637,934

Any unexpended balance remaining in the account "Special Election" at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

EDUCATIONAL

24—State Department of Education

Acct. No. 2770

1 Teacher Education Centers—Total ....................... $ 0
### 25—West Virginia Board of Regents (Control)

**Acct. No. 2790**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$108,499,728</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$21,000,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$800,000</td>
</tr>
<tr>
<td>Bureau of Coal Research</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>National Research Center for Coal and Energy</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Transportation Services—W.V.U.</td>
<td>$1,200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$134,999,728</strong></td>
</tr>
</tbody>
</table>

### 26—West Virginia Board of Regents

**Acct. No. 2800**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$738,770</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$274,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$7,000</td>
</tr>
<tr>
<td>Scholarship Program</td>
<td>$2,800,000</td>
</tr>
<tr>
<td>Tuition Contract Programs</td>
<td>$725,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,544,770</strong></td>
</tr>
</tbody>
</table>

### 27—West Virginia College of Osteopathic Medicine

**Acct. No. 2810**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,874,984</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$625,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$41,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$70,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,610,984</strong></td>
</tr>
</tbody>
</table>

6 Any unexpended balance remaining in the appropriation at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

### 28—Marshall University—Medical School

**Acct. No. 2840**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,742,449</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,108,000</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>42,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>116,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$4,008,449</td>
</tr>
</tbody>
</table>

6. Any unexpended balance remaining in the appropriation for “Equipment” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

---

### 29—West Virginia University—Medical School

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$11,781,395</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>6,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>400,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>250,000</td>
</tr>
<tr>
<td>5</td>
<td>Family Practice Residency Support Program</td>
<td>442,894</td>
</tr>
<tr>
<td>6</td>
<td>Intern and Residency Support Programs for Community Hospitals</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Community Hospitals</td>
<td>700,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$19,574,289</td>
</tr>
</tbody>
</table>

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

---

### 30—State Department of Education

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,926,760</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>967,920</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>1,100</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>12,400</td>
</tr>
<tr>
<td>5</td>
<td>Statewide Testing Program</td>
<td>169,116</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>66,124</td>
</tr>
<tr>
<td></td>
<td>Other Expenses</td>
<td>102,992</td>
</tr>
<tr>
<td>6</td>
<td>Driver Education</td>
<td>—0—</td>
</tr>
<tr>
<td>7</td>
<td>Aid to Children’s Home</td>
<td>50,000</td>
</tr>
<tr>
<td>8</td>
<td>Regional Education Service Agencies</td>
<td>421,982</td>
</tr>
<tr>
<td>9</td>
<td>Child Development Programs</td>
<td>487,175</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$4,036,453</td>
</tr>
</tbody>
</table>
11 The above appropriation includes the State Board of Education and their executive office.

31—State Department of Education—School Lunch Program

Acct. No. 2870

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$167,467</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$14,879</td>
</tr>
<tr>
<td>Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>$1,950,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,132,346</td>
</tr>
</tbody>
</table>

32—State Board of Education—Vocational Division

Acct. No. 2890

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$404,217</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$156,083</td>
</tr>
<tr>
<td>Equipment</td>
<td>$6,780</td>
</tr>
<tr>
<td>Vocational Aid</td>
<td>$8,864,584</td>
</tr>
<tr>
<td>Adult Basic Education</td>
<td>$632,500</td>
</tr>
<tr>
<td>Start Up Funds and Equipment for New and Existing Vocational Facilities</td>
<td>$1,250,000</td>
</tr>
<tr>
<td>New and Expanding Industries</td>
<td>$150,000</td>
</tr>
<tr>
<td>Total</td>
<td>$11,464,164</td>
</tr>
</tbody>
</table>

33—Educational Broadcasting Authority

Acct. No. 2910

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$81,297</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$36,934</td>
</tr>
<tr>
<td>Equipment</td>
<td>$15,000</td>
</tr>
<tr>
<td>Regional ETV</td>
<td>$2,247,433</td>
</tr>
<tr>
<td>WWVU—TV</td>
<td>$970,529</td>
</tr>
<tr>
<td>Total</td>
<td>$3,351,193</td>
</tr>
</tbody>
</table>

"Regional ETV" is for participation in the construction and operation of Regional ETV stations by Marshall University, Concord College, Bluefield State College, West Virginia Institute of Technology and West Virginia State College, and the
acquisition of a new FM radio station to serve northern pan-
handle, and such funds may be transferred to Special Revenue
Accounts for matching County and/or Federal Funds.

34—State Board of Education—Vocational Division

Acct. No. 2940

1 Other Expenses—Total ........................................ $ 0

2 Any unexpended balance remaining in this appropria-
tion at the close of the fiscal year 1981-82 is hereby re-
appropriated for expenditure during the fiscal year 1982-
83.

35—State Department of Education—State Aid to Schools

Acct. No. 2950

1 Professional Educators ........................................ $373,837,354
2 Service Personnel .............................................. 131,841,811
3 Fixed Charges .................................................. 56,332,659
4 Transportation .................................................. 24,213,552
5 Administration .................................................. 2,616,845
6 Other Current Expenses ........................................ 32,869,146
7 Improve Instructional Programs ............................. 15,634,172

8 Basic Foundation Allowances .............................. 637,345,539
9 Less Local Share ................................................. 92,162,346

10 Total Basic State Aid ........................................ 545,183,193
11 Loss Reduction .................................................. 2,699,443
12 Staffing Improvement .......................................... 2,583,248

   Professional Educators .................................. 1,707,280
   Service Personnel ........................................... 875,968

13 Increased Enrollment ......................................... 225,000

14 Total .......................................................... $550,690,884

36—State Department of Education—
   Aid for Exceptional Children

Acct. No. 2960

1 Personal Services .............................................. $ 260,790
## Appropriations

2 Current Expenses ................................................. 136,298
3 Equipment ........................................................... 7,000
4 Out-of-State Instruction ........................................ 428,000
5 Aid to Counties .................................................. 6,475,670
  County Grant Awards .............. 6,054,303
  Regional Ed. Service Agency
    Grants ................................................. 212,000
    Special State Projects .......... 209,367

6 Total .............................................................. $ 7,307,758

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

8 The appropriation for “Aid to Counties” may be expended
   for the initiation, maintenance and/or improvements of special
   education programs including employment of new professional
   education personnel solely serving exceptional children; train-
   ing of educational personnel to work with exceptional children;
   and supportive costs such as materials, transportation, contract-
   ed services, minor renovation and other costs directly related
   to the special education delivery process prescribed by the
   State Board of Education.

### 37—Teachers’ Retirement Board

Acct. No. 2980

1 Teachers’ Retirement Fund ......................... $ 39,400,000
2 Supplemental Benefits for Annuitants .......... 4,600,000

3 Total .............................................................. $ 44,000,000

4 The line item “Supplemental Benefits for Annuitants” may
   be transferred as required and shall be expended in accordance
   with the provisions of Enrolled Senate Bill No. 456, 1981
   Regular Session of the Legislature.

### 38—West Virginia Schools for the Deaf and the Blind

Acct. No. 3330

1 Personal Services ............................................. $ 2,919,762
## Appropriations

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3360</td>
<td>Personal Services</td>
<td>$118,900</td>
</tr>
<tr>
<td>3360</td>
<td>Current Expenses</td>
<td>$61,981</td>
</tr>
<tr>
<td>3360</td>
<td>Repairs and Alterations</td>
<td>$19,000</td>
</tr>
<tr>
<td>3360</td>
<td>Equipment</td>
<td>$15,000</td>
</tr>
<tr>
<td>3360</td>
<td>Total</td>
<td>$214,881</td>
</tr>
</tbody>
</table>

### 39—State FFA-FHA Camp and Conference Center

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3500</td>
<td>Personal Services</td>
<td>$924,742</td>
</tr>
<tr>
<td>3500</td>
<td>Current Expenses</td>
<td>$190,861</td>
</tr>
<tr>
<td>3500</td>
<td>Repairs and Alterations</td>
<td>$3,500</td>
</tr>
<tr>
<td>3500</td>
<td>Equipment</td>
<td>$9,200</td>
</tr>
<tr>
<td>3500</td>
<td>Per-Capita Grants</td>
<td>$5,115,707</td>
</tr>
<tr>
<td>3500</td>
<td>Books and Periodicals</td>
<td>$195,120</td>
</tr>
<tr>
<td>3500</td>
<td>Library Matching Fund (Construction)</td>
<td>$100,000</td>
</tr>
<tr>
<td>3500</td>
<td>Total</td>
<td>$6,539,130</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for “Library Matching Fund (Construction)” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

### 41—Department of Culture and History

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3510</td>
<td>Personal Services</td>
<td>$993,595</td>
</tr>
<tr>
<td>3510</td>
<td>Current Expenses</td>
<td>$264,047</td>
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<tr>
<td>3510</td>
<td>Repairs and Alterations</td>
<td>$25,000</td>
</tr>
<tr>
<td>3510</td>
<td>Equipment</td>
<td>$35,000</td>
</tr>
</tbody>
</table>
5 Arts and Humanities Fund ........................................ 680,163
   Personal Services ........................................... 165,147
   Current Expenses ............................................ 1,359
   Grants and Contractual Services ......................... 513,657

6 Department Programming Funds ................................ 850,000
   Outreach and Education ...................................... 315,250
   Technical Assistance ........................................ 129,750
   Cultural Center Programs ................................... 405,000

7 Washington Carver Camp ....................................... 140,000

8 Grants, Fairs and Festivals .................................. 668,500

9 Independence Hall ............................................. 0

10 Historical Highway Markers .................................. 0

11 Historical Preservation ....................................... 0

12 Total .................................................................... $3,656,305

The above appropriation for "Arts and Humanities Fund," "Department Programming Funds," "Grants, Fairs and Festivals" and "Washington Carver Camp" shall be expended only upon authorization of the Department of Culture and History and in accordance with the provisions of Chapter 5A and Chapter 12, Article 3 of the Code of West Virginia.

All Federal moneys received as reimbursements to the Dept. of Culture and History for moneys expended from the General Revenue Fund for Arts and Humanities are hereby reappropriated for the purposes as originally made, including Personal Services, Current Expenses and Equipment.

Any unexpended balance remaining in the appropriation for "Independence Hall, Wheeling, West Virginia" at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

Any unexpended balance remaining in the appropriation for "Washington Carver Camp" at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.
### Appropriations

**Corrections**

#### 42—Department of Corrections
**Probation and Parole**

Acct. No. 3650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries of Members of Board of Probation and Parole</td>
<td>$75,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$45,902</td>
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<td>Current Expenses</td>
<td>$23,132</td>
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<td><strong>Total</strong></td>
<td><strong>$144,034</strong></td>
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#### 43—Department of Corrections
**Parole Services**

Acct. No. 3660

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$625,564</td>
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<tr>
<td>Current Expenses</td>
<td>$129,515</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$500</td>
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<tr>
<td>Equipment</td>
<td>$500</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$756,079</strong></td>
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</table>

#### 44—Department of Corrections
**Work Release Centers**

Acct. No. 3670

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$462,980</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$160,680</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,900</td>
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<tr>
<td>Equipment</td>
<td>$4,580</td>
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<td><strong>Total</strong></td>
<td><strong>$630,140</strong></td>
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#### 45—Department of Corrections
**Acct. No. 3680**

<table>
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<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$33,750</td>
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<td>Other Personal Services</td>
<td>$405,156</td>
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<tr>
<td>Current Expenses</td>
<td>$133,584</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$750</td>
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<td><strong>Total</strong></td>
<td><strong>$573,240</strong></td>
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### 46—Anthony Center

Acct. No. 3690

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$684,036</td>
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<tr>
<td>2 Current Expenses</td>
<td>$278,420</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$14,878</td>
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<td>4 Equipment</td>
<td>$1,000</td>
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<td><strong>Total</strong></td>
<td><strong>$978,334</strong></td>
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</table>

### 47—West Virginia Industrial School for Boys

Acct. No. 3700

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,223,866</td>
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<tr>
<td>2 Current Expenses</td>
<td>$490,279</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$90,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$2,000</td>
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<td><strong>Total</strong></td>
<td><strong>$1,806,145</strong></td>
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### 48—Davis Center

Acct. No. 3710

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$527,165</td>
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<tr>
<td>2 Current Expenses</td>
<td>$178,195</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$22,600</td>
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<td>4 Equipment</td>
<td>$800</td>
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<td><strong>Total</strong></td>
<td><strong>$728,760</strong></td>
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</table>

### 49—West Virginia Industrial Home for Youth

Acct. No. 3720

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$583,467</td>
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<tr>
<td>2 Current Expenses</td>
<td>$181,173</td>
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<td>3 Repairs and Alterations</td>
<td>$3,700</td>
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<td>4 Equipment</td>
<td>$500</td>
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<td><strong>Total</strong></td>
<td><strong>$768,840</strong></td>
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### 50—West Virginia State Prison for Women

Acct. No. 3740

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$666,157</td>
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</table>
### Appropriations

#### 51—West Virginia Penitentiary

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$3,491,600</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,775,328</td>
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<td>3</td>
<td>Repairs and Alterations</td>
<td>$62,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$7,000</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$5,335,928</td>
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</table>

#### 52—Huttonsville Correctional Center

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,210,977</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,426,054</td>
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<td>3</td>
<td>Repairs and Alterations</td>
<td>$90,300</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$7,000</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$3,734,331</td>
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### Health and Welfare

#### 53—State Health Department

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$6,371,952</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$4,415,272</td>
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<td>3</td>
<td>Equipment</td>
<td>$126,896</td>
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<tr>
<td>4</td>
<td>Reimbursement to Community Mental Health and Mental Retardation Centers</td>
<td>$17,012,796</td>
</tr>
<tr>
<td>5</td>
<td>Reimbursement to Community Behavioral Health Programs for Social Services</td>
<td>$1,613,632</td>
</tr>
<tr>
<td>6</td>
<td>Special Olympics</td>
<td>$28,000</td>
</tr>
<tr>
<td>7</td>
<td>State Aid to Local Agencies</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>8</td>
<td>Grants to Counties and EMS</td>
<td>$1,679,090</td>
</tr>
<tr>
<td>9</td>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees</td>
<td>$1,430,000</td>
</tr>
<tr>
<td>10</td>
<td>Foster Grandparents Stipends/Travel</td>
<td>$62,370</td>
</tr>
<tr>
<td>11</td>
<td>Office of Chief Medical Examiner</td>
<td>$905,600</td>
</tr>
</tbody>
</table>

#### Personal Services
- $398,555

#### Current Expenses
- $488,045

#### Repairs and Alterations
- $4,000

#### Equipment
- $15,000
Ch. 20]  

APPROPRIATIONS

16 Hemophiliac Assistance Program ................ 141,805
17 Placement Program for the Developmentally Disabled ................ 1,651,000
18 Grants to local Health Entities/Community Health ................ 0
19 Primary Care Contracts to Community Health Centers ................ 1,103,090
20 Corporate Non-Profit Community Health Center F.M.H.A. Mortgage Finance ................ 75,000

25 Total ............................................. $ 40,616,503

26 Any unexpended balance remaining in the appropriation for “Placement Program for the Developmentally Disabled” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

54—Department of Veterans Affairs
Veterans Home

Acct. No. 4010

1 Personal Services ........................................ $ 966,300
2 Current Expenses ....................................... 320,310
3 Repairs and Alterations ................................. 200,000
4 Equipment .............................................. 225,000

5 Total ...................................................... $ 1,711,610

6 Any unexpended balance remaining in the appropriation for “Repairs and Alterations” and “Equipment” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

55—Solid Waste Disposal

Acct. No. 4020

1 Personal Services ........................................ $ 86,570
2 Current Expenses ....................................... 37,325
3 Equipment .............................................. 500

4 Total ...................................................... $ 124,395
## Appropriations

### 56—Department of Veterans Affairs

**Acct. No. 4040**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$624,410</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$107,177</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$5,000</td>
</tr>
<tr>
<td>4</td>
<td>Educational opportunities for children of War Veterans</td>
<td>$18,000</td>
</tr>
<tr>
<td>5</td>
<td>In aid of Veterans Day Patriotic Exercises</td>
<td>$7,000</td>
</tr>
<tr>
<td>6</td>
<td>National Cemetery—Study and Legal Fees</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

**Total** $766,587

Moneys in item 6 above are to be expended subject to the approval of the Department of Veterans Affairs upon presentation of satisfactory plans by the Grafton G. A. R. Post, American Legion, Veterans of Foreign Wars and Sons of Veterans.

### 57—Department of Welfare

**Acct. No. 4050**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$10,168,467</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$4,767,193</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$17,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$41,757</td>
</tr>
<tr>
<td>5</td>
<td>Assistance Payments</td>
<td>$18,462,372</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching Fund</td>
<td>$664,633</td>
</tr>
<tr>
<td>7</td>
<td>Social Services</td>
<td>$19,605,000</td>
</tr>
<tr>
<td>8</td>
<td>Indigent Burials</td>
<td>$620,000</td>
</tr>
<tr>
<td>9</td>
<td>Emergency Assistance</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Medical Services</td>
<td>$50,840,000</td>
</tr>
<tr>
<td>11</td>
<td>T.R.I.P.</td>
<td>$642,000</td>
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</tbody>
</table>

**Total** $106,828,422

### 58—State Commission on Aging

**Acct. No. 4060**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$95,985</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$49,733</td>
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<tr>
<td>3</td>
<td>Programs for Elderly</td>
<td>$2,684,915</td>
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</table>
### Ch. 20] Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Senior Citizens Centers</td>
<td>200,000</td>
</tr>
<tr>
<td>5</td>
<td>Golden Mountaineer Program</td>
<td>35,000</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>-0-</td>
</tr>
<tr>
<td></td>
<td>Other Expenses</td>
<td>-0-</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$3,065,633</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Senior Citizens Centers" at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83, with the purpose of such items to be redesignated: "Senior Citizens Centers—land acquisition, construction, repairs or alterations."

59—Greenbrier School for Mentally Retarded Children

<table>
<thead>
<tr>
<th>Account No. 4140</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,020,000</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>260,361</td>
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<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>35,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>13,200</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,328,561</td>
</tr>
</tbody>
</table>

60—State Health Department—Mental Hospitals

<table>
<thead>
<tr>
<th>Account No. 4160</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$18,747,810</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>5,667,276</td>
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<td>3</td>
<td>Repairs and Alterations</td>
<td>286,220</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>227,240</td>
</tr>
<tr>
<td>5</td>
<td>Student Nurse Affiliation Program</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>(Huntington)</td>
<td>70,894</td>
</tr>
<tr>
<td>7</td>
<td>Psychiatric Training Center—Student Nurses</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>(Weston)</td>
<td>219,971</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$25,219,411</td>
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</tbody>
</table>

The director of health, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which re-
ceives a portion of the above appropriation. He shall also, within fifteen days after the close of each six month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made under each of line items 1, 2, 3 and 4 above.

Any unexpended balance remaining in the accounts “Re-novation for Certification” and “Renovation Unit 4—Huntington” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

61—Colin Anderson Center

Acct. No. 4190

1 Personal Services ........................................ $ 7,302,996
2 Current Expenses ........................................... 1,229,760
3 Repairs and Alterations .................................... 160,000
4 Equipment ................................................... 56,500

5 Total ........................................................ $ 8,749,256

62—Fairmont Emergency Hospital

Acct. No. 4250

1 Personal Services ............................................ $ 798,329
2 Current Expenses ............................................ 362,056
3 Repairs and Alterations .................................... 32,300
4 Equipment ................................................... 26,000

5 Total ........................................................ $ 1,218,685

63—Welch Emergency Hospital

Acct. No. 4260

1 Personal Services ............................................ $ 1,371,430
2 Current Expenses ............................................ 337,603
3 Repairs and Alterations .................................... 15,300
4 Equipment ................................................... 9,000

5 Total ........................................................ $ 1,733,333
### 64—Andrew S. Rowan Memorial Home

**Acct. No. 4270**

<table>
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<tbody>
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<td>4 Equipment</td>
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<td><strong>Total</strong></td>
<td><strong>$1,473,790</strong></td>
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### 65—Hopemont Hospital

**Acct. No. 4300**

<table>
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<th>Item</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,468,964</td>
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<td>2 Current Expenses</td>
<td>$1,020,614</td>
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<tr>
<td>3 Repairs and Alterations</td>
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<td>4 Equipment</td>
<td>$15,000</td>
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<td><strong>Total</strong></td>
<td><strong>$4,579,578</strong></td>
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### 66—Pinecrest Hospital

**Acct. No. 4310**

<table>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
<td>$1,194,238</td>
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<td>3 Repairs and Alterations</td>
<td>$79,650</td>
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<td>4 Equipment</td>
<td>$21,870</td>
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<td><strong>Total</strong></td>
<td><strong>$4,643,985</strong></td>
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### 67—Denmar Hospital

**Acct. No. 4320**

<table>
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<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$20,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$10,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,165,786</strong></td>
</tr>
</tbody>
</table>

6 Any unexpended balance remaining in the appropriation
7 “Renovation for Certification” at the close of the fiscal year
1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

68—State Board of Education—Rehabilitation Division

Acct. No. 4400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$4,101,072</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,035,262</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>1,423</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$51,616</td>
</tr>
<tr>
<td>5</td>
<td>Case Services</td>
<td>$2,302,479</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching Fund</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>WVU—Reimbursement</td>
<td>$273,542</td>
</tr>
<tr>
<td>8</td>
<td>Workshop Development</td>
<td>$1,181,361</td>
</tr>
<tr>
<td>9</td>
<td>Blind Services Coordinating Unit</td>
<td>$37,000</td>
</tr>
</tbody>
</table>

| Total | $9,034,627 |

Any unexpended balance remaining in the appropriation for “Workshop Development” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

69—Commission for the Blind

Acct. No. 4450

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total—Unclassified</td>
<td>$0</td>
</tr>
</tbody>
</table>

BUSINESS AND INDUSTRIAL RELATIONS

70—Bureau of Labor and Department of Weights and Measures

Acct. No. 4500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,048,590</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$287,989</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$18,400</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$8,635</td>
</tr>
<tr>
<td>5</td>
<td>Labor Management Advisory Council</td>
<td>$28,474</td>
</tr>
<tr>
<td>6</td>
<td>Enforcement Contractors Bond</td>
<td>$0</td>
</tr>
<tr>
<td>7</td>
<td>Enforce Minimum Wage Law</td>
<td>$0</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>8</th>
<th>Enforce Hazardous Chemical Act</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Total</td>
<td>$1,392,088</td>
</tr>
</tbody>
</table>

#### Department of Mines

**Acct. No. 4600**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$3,273,255</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>1,097,458</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>95,657</td>
</tr>
<tr>
<td>4</td>
<td>Miner Training Education and Certification</td>
<td>130,000</td>
</tr>
<tr>
<td>5</td>
<td>Board of Coal Mine Health and Safety</td>
<td>45,000</td>
</tr>
<tr>
<td>6</td>
<td>Gas Well Certification</td>
<td>200,000</td>
</tr>
<tr>
<td>7</td>
<td>Development of Mine Safety Program</td>
<td>202,516</td>
</tr>
</tbody>
</table>

| 8 | Total                         | $5,043,886 |

#### Interstate Commission on Potomac River Basin

**Acct. No. 4730**

| 1 | West Virginia’s contribution to Potomac River Basin Interstate Commission | $30,350 |

#### Ohio River Valley Water Sanitation Commission

**Acct. No. 4740**

| 1 | West Virginia’s contribution to the Ohio River Valley Water Sanitation Commission | $64,920 |

#### West Virginia Air Pollution Control Commission

**Acct. No. 4760**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$565,310</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>164,836</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>1,000</td>
</tr>
</tbody>
</table>

| 4 | Total                         | $731,146 |

#### State Boxing Commission

**Acct. No. 4790**

| 1 | Total                         | $5,500   |
76—Department of Banking

Acct. No. 4800

1 Personal Services ............................... $ 571,754
2 Current Expenses ........................................ 350,000
3 Equipment ................................................. 15,000

4 Total ..................................................... $ 936,754

77—West Virginia State Aeronautics Commission

Acct. No. 4850

1 Any unexpended balance remaining in the appropriation
2 "Airport Matching" at the close of the fiscal year 1981-82
3 is hereby reappropriated for expenditure during fiscal year
4 1982-83.

78—West Virginia Nonintoxicating
Beer Commissioner

Acct. No. 4900

1 Personal Services ............................... $ 305,777
2 Current Expenses ........................................ 86,217
3 Equipment ................................................. 300

4 Total ..................................................... $ 392,294

79—West Virginia Racing Commission

Acct. No. 4950

1 Personal Services ............................... $ 853,609
2 Current Expenses ........................................ 89,612
3 Equipment ................................................. 10,000

4 Total ..................................................... $ 953,221

AGRICULTURE

80—Department of Agriculture

Acct. No. 5100

1 Salary of Commissioner ............................... $ 39,000
2 Other Personal Services .............................. 1,882,367
### Ch. 20] Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$936,408</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$32,250</td>
</tr>
<tr>
<td>5</td>
<td>Multiflora Rose Eradication Program</td>
<td>$165,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$3,055,025</td>
</tr>
</tbody>
</table>

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

---

**81—Farm Management Commission**

**Acct. No. 5110**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,008,331</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$888,577</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$262,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$167,323</td>
</tr>
<tr>
<td>5</td>
<td>Livestock Purchase</td>
<td>$139,837</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,466,068</strong></td>
</tr>
</tbody>
</table>

---

**82—Department of Agriculture—Soil Conservation Committee**

**Acct. No. 5120**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$319,083</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$108,712</td>
</tr>
<tr>
<td>3</td>
<td>Watershed Program</td>
<td>$150,000</td>
</tr>
<tr>
<td>4</td>
<td>Stream Channelization</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$577,795</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Watershed Program,” “Mud River Flood Control Project” and “Channelization of Kelley’s Creek,” hereinafter redesignated as “Stream Channelization,” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

---

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

**Acct. No. 5130**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$733,980</td>
</tr>
</tbody>
</table>
2 Current Expenses ........................................ 169,728
3 Equipment .................................................. 41,200

4 Total .......................................................... $ 944,908

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

84—Department of Agriculture—Meat Inspection

Acct. No. 5140

1 Personal Services ........................................ $ 367,000
2 Current Expenses ........................................ 152,494

3 Total .......................................................... $ 519,494

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

85—Department of Agriculture—Agricultural Awards

Acct. No. 5150

1 Agriculture Awards ...................................... $ 70,000
2 Fairs and Festivals ....................................... 148,450

3 Total .......................................................... $ 218,450

CONSERVATION AND DEVELOPMENT

86—Geological and Economic Survey

Acct. No. 5200

1 Personal Services ...................................... $ 1,247,699
2 Current Expenses ....................................... 302,464
3 Repairs and Alterations ................................ 33,488
4 Equipment .................................................. 37,658
5 Special Studies .......................................... 60,000

6 Total .......................................................... $ 1,681,309
### 87—Department of Natural Resources

**Acct. No. 5650**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$9,872,496</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,030,574</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$490,951</td>
</tr>
<tr>
<td>Equipment</td>
<td>$304,276</td>
</tr>
<tr>
<td>Fire Prevention Control</td>
<td>$706,237</td>
</tr>
<tr>
<td><strong>Personal Services</strong></td>
<td><strong>643,847</strong></td>
</tr>
<tr>
<td><strong>Other Expenses</strong></td>
<td><strong>62,390</strong></td>
</tr>
<tr>
<td>Water Resources Board and Reclamation</td>
<td></td>
</tr>
<tr>
<td>Board of Review</td>
<td><strong>55,000</strong></td>
</tr>
<tr>
<td>Debt Service</td>
<td><strong>1,160,000</strong></td>
</tr>
<tr>
<td>Committee on Black Fly</td>
<td><strong>40,000</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$15,659,534</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Little Beaver State Park," "Pleasants Creek Public Hunting and Fishing Area," "Panther State Forest (75)," "Panther State Forest (77)," "Improvement and land acquisition—Berwind Lake Public Hunting and Fishing Area," "Park Improvement Program," "Reeds Creek Hatchery" and "Castleman's Run Lake" at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

Any or all funds appropriated for "Fire Prevention Control" may be transferred to Special Revenue Fund to match and aid Federal Funds.

### 88—Public Land Corporation

**Acct. No. 5660**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td><strong>$153,230</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriations for "Public Land Corporation" and "Blennerhasset Island" at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

### 89—Water Development Authority

**Acct. No. 5670**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td><strong>$153,230</strong></td>
</tr>
</tbody>
</table>
2 Current Expenses .............................................. 60,177
3 Lubeck Public Service District .............................. 107,000
4 Bolair Public Service District .............................. 175,000
5 McMenemy Water Project .................................... 115,000

6 Total ........................................................................................................ $ 610,407

7 Any unexpended balance remaining in the appropriation
8 for “Capital Outlay” and “Phase III Hardship Grants” at the
9 close of the fiscal year 1981-82 is hereby reappropriated for
10 expenditure during the fiscal year 1982-83.

90—West Virginia Railroad Maintenance Authority

Acct. No. 5690
1 Personal Services ............................................... $ 673,131
2 Current Expenses ................................................ 33,277
3 Baltimore and Ohio—Passenger Service .................. 0

4 Total ........................................................................................................ $ 706,408

PROTECTION

91—Department of Public Safety

Acct. No. 5700
1 Personal Services ............................................... $ 13,926,004
2 Current Expenses ................................................ 6,283,514
3 Repairs and Alterations ......................................... 268,400
4 Equipment ............................................................ 1,882,440
5 Emergency Fund .................................................... 10,000

6 Total ........................................................................................................ $ 22,370,358

92—Adjutant General—State Militia

Acct. No. 5800
1 Personal Services ............................................... $ 236,382
2 Current Expenses ................................................ 532,980
3 Repairs and Alterations ......................................... 59,000
4 Equipment ............................................................ 16,500
5 Compensation of Commanding Officers, Clerical
6 Allowances and Uniform Allowances ... 105,035
Ch. 20] Appropriations

7 Property Maintenance ................................................. 905,950
8 State Armory Board .................................................. 2,250,000
9 College Education Fund ............................................ 160,000

10 Total ........................................................................... $ 4,265,847

MISCELLANEOUS BOARDS AND COMMISSIONS

93—West Virginia Civil Service System

Acct. No. 5840

1 Personal Services ....................................................... $ 808,177
2 Current Expenses ...................................................... 223,273
3 Equipment .................................................................. 4,000

4 Total ........................................................................... $ 1,035,450

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

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

94—West Virginia Public Legal Services Council

Acct. No. 5900

1 Council and central office ............................................. $ 175,000
2 Appointed counsel or panel attorneys
   in circuits where public defender corporations not activated ................................................. 1,350,000
3 Loans and grants, activated public
defender corporations or panel
4 attorneys or appointed counsel ........................................ 1,350,000
Appropriations

8 Appointed counsel fees, closing cases after public defender corporations are activated 250,000
9 Unclassified 275,000

12 Total $ 3,400,000

13 The “Unclassified” item appropriation shall be expended for the appellate advocacy division and criminal research bureau or other proper expenditure. Any of the above line items, regardless of other designation, may be expended to provide pay approved panel attorney fees.

95—Human Rights Commission

Acct. No. 5980

1 Personal Services $ 325,951
2 Current Expenses 125,214
3 Equipment 2,885

4 Total $ 454,050

96—Women’s Commission

Acct. No. 6000

1 Personal Services $ 32,846
2 Current Expenses 13,346

3 Total $ 46,192

97—West Virginia Public Employees Retirement Board

Acct. No. 6140

1 Employers Accumulation Fund $ 11,500,000
2 Expense Fund 151,176
3 Supplemental Benefits for Annuitants 1,700,000

4 Total $ 13,351,176

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

The line item “Supplemental Benefits for Annuitants” may be transferred as required and shall be expended in accordance with the provisions of Enrolled Senate Bill No. 456, 1981 Regular Session of the Legislature.

98—West Virginia Public Employees Insurance Board

Expenses Fund

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$237,500</td>
</tr>
</tbody>
</table>

State Contributions

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$55,832,007</td>
</tr>
</tbody>
</table>

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

99—Insurance Commissioner

Expenses Fund

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$611,155</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>201,678</td>
</tr>
</tbody>
</table>
3 Equipment .......................................................... 25,000

4 Total ................................................................. $ 837,833

100—*State Fire Commission*

Acct. No. 6170

1 Personal Services .............................................. $ 555,500
2 Current Expenses .............................................. 213,091
3 Repairs and Alterations ..................................... 3,048
4 Equipment ...................................................... 19,470

5 Total ................................................................. $ 791,109

101—*State Department of Highways*

Acct. No. 6410

1 Unclassified—Total .............................................. $ 57,400,000

2 Any or all of the above appropriations may be trans-
3 ferred to the State Road Fund for distribution.

1 Sec. 2. Appropriations from other funds.—From the funds
designated there is hereby appropriated conditionally upon the
fulfillment of the provisions set forth in Chapter 5A, Article 2
of the Code of West Virginia, the following amounts as itemiz-
ed for expenditure during the fiscal year one thousand nine
hundred eighty-three.

102—*State Department of Highways*

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1 Maintenance Expressway, Trunkline and
2 Feeder ............................................................ $ 51,400,000
3 Maintenance, State Local Services ......................... 64,436,000
4 Maintenance, Contract Paving
5 and Secondary Road Maintenance ......................... 11,500,000
6 Inventory Revolving .......................................... 1,682,000
7 Equipment Revolving ......................................... 4,000,000
8 General Operations ............................................ 16,696,000
The above appropriation line items are to be expended in accordance with the provisions of Chapter 17 and 17C, Code of West Virginia, one thousand nine hundred thirty-one, as amended.

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

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

#### Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$60,430</td>
</tr>
<tr>
<td>2</td>
<td>Other Expenses</td>
<td>$26,072</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$86,502</td>
</tr>
</tbody>
</table>

4. Expenditures from this appropriation shall not exceed the amount to be reimbursed by the federal government.

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

### 105—Treasurer’s Office—Abandoned and Unclaimed Property

#### Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$52,112</td>
</tr>
<tr>
<td>2</td>
<td>Other Expenses</td>
<td>$39,672</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$91,784</td>
</tr>
</tbody>
</table>

### 106—Real Estate Commission

#### Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$113,592</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$92,846</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$7,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$213,438</td>
</tr>
</tbody>
</table>

5. The total amount of this appropriation shall be paid out of collections of license fees as provided by law.
107—West Virginia Racing Commission
Acct. No. 8080
TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses ........................................ $ 5,000

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 except
6 for hospitalization medical care and/or funeral expenses for
7 persons contributing to this fund.

108—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 provided
4 by law.

109—Department of Finance and Administration—
Division of Purchasing—Revolving Fund
Acct. No. 8140
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .......................................... $ 741,588
2 Current Expenses ......................................... 441,458
3 Equipment .................................................. 42,000
4 Social Security Matching ................................. 53,415
5 Public Employees Retirement Matching .............. 75,735
6 Public Employees Health Insurance .................... 67,830

7 Total ......................................................... $ 1,422,026

8 The total amount of this appropriation shall be paid
9 from Special Revenue Fund as provided by Chapter 5A,
10 Article 2 of the Code of West Virginia.
The above appropriation includes salaries and operating expenses.

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

110—Department of Finance and Administration—
Information Systems Service Division Fund

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

$2,609,691
5,456,804
189,184
187,616
268,026
150,980
8,862,301

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Finance and Administration as provided by law.

111—Department of Agriculture

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

$383,724
18,638
28,280
40,098
13,465
484,205

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Agriculture as provided by law.
112—*State Committee of Barbers and Beauticians*

Acct. No. 8220

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$116,854</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$91,462</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$209,316</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the State Committee of Barbers and Beauticians as provided by law.

113—*Public Service Commission*

Acct. No. 8280

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Commissioners</td>
<td>$87,800</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$2,953,150</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$1,088,438</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$148,000</td>
</tr>
<tr>
<td>5 Social Security Matching</td>
<td>$218,314</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching</td>
<td>$309,546</td>
</tr>
<tr>
<td>7 Public Employees Health Insurance</td>
<td>$215,760</td>
</tr>
<tr>
<td>8 Consumer Advocate</td>
<td>$410,932</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$5,431,940</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections for special license fees from public service corporations as provided by law.

114—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$169,297</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$80,385</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$3,500</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Security Matching</td>
<td>12,194</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>17,289</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>8,928</td>
</tr>
</tbody>
</table>

**Total:** $291,593

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

#### 115—Public Service Commission—Motor Carrier Division

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$943,874</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>383,360</td>
</tr>
<tr>
<td>Equipment</td>
<td>8,250</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>67,983</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>96,393</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>65,472</td>
</tr>
</tbody>
</table>

**Total:** $1,565,332

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

#### 116—Department of Natural Resources

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,194,226</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>2,325,402</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>218,992</td>
</tr>
<tr>
<td>Equipment</td>
<td>485,069</td>
</tr>
<tr>
<td>Land Purchase and Building</td>
<td>840,848</td>
</tr>
<tr>
<td>Bowden Hatchery Operations</td>
<td>250,000</td>
</tr>
</tbody>
</table>

**Total:** $7,314,537
The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Department of Natural Resources. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and Special Funds collected at state parks. Any unexpended balances remaining in the prior appropriation item “Land Purchase and Buildings” at the close of fiscal year 1981-82 and available for capital improvement and land purchase purposes are hereby appropriated for expenditure in fiscal year 1982-83 all in accordance with Chapter 20, Article 2, Section 34, Code of West Virginia.

The above appropriation “Bowden Hatchery Operations” shall be spent only if the Federal Government closes and leases or transfers the operation of said hatchery to the West Virginia Department of Natural Resources.

117—Department of Public Safety—Inspection Fees

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$415,304</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$220,550</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$8,700</td>
</tr>
<tr>
<td>Equipment</td>
<td>$21,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$665,554</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected for inspection stickers as provided by law.

118—State Health Department—Hospital Services

Revenue Account (Special Fund)
(Capital Improvement, Renovation and Operation)

Acct. No. 8491-12

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various Capital Improvement Projects for Institutions</td>
<td>$1,250,000</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Appropriation Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Welch Emergency Hospital, Capital Outlay and Renovation</td>
<td>6,200,000</td>
</tr>
<tr>
<td>5</td>
<td>Weston Hospital, Capital Outlay</td>
<td>420,000</td>
</tr>
<tr>
<td>7</td>
<td>Pinecrest Hospital, Capital Outlay</td>
<td>1,300,000</td>
</tr>
<tr>
<td>9</td>
<td>Greenbrier Center, Capital Outlay and Renovation</td>
<td>265,000</td>
</tr>
<tr>
<td>11</td>
<td>Miscellaneous Capital Improvement Projects for Institutions</td>
<td>500,000</td>
</tr>
<tr>
<td>13</td>
<td>Huntington Hospital, Capital Outlay and Renovation</td>
<td>750,000</td>
</tr>
<tr>
<td>15</td>
<td>Pinecrest Hospital, Capital Outlay and Renovation for Certification</td>
<td>535,000</td>
</tr>
<tr>
<td>17</td>
<td>Huntington Hospital, Capital Outlay and Renovation</td>
<td>1,800,000</td>
</tr>
<tr>
<td></td>
<td>The total amount of this appropriation shall be paid from</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the Hospital Services Revenue Account special fund created</td>
<td></td>
</tr>
<tr>
<td></td>
<td>by the 1981 Legislature, chapter one hundred twenty, acts,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>regular session. Projects are to be paid on a cash basis</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and made available from the date of passage. Items and projects of this appropriation are to be begun as funds become available in the special fund, but only in the listed order of priority herein.</td>
<td></td>
</tr>
</tbody>
</table>

119—Board of Regents—West Virginia University
Special Capital Improvement Fund
Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$ 452,000</td>
</tr>
</tbody>
</table>

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

120—Board of Regents—State System Registration Fee
Special Capital Improvements Fund
(Capital Improvement and Bond Retirement Fund)
Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service and Reserve</td>
<td>$ 2,669,000</td>
</tr>
</tbody>
</table>
2 Capital Building Repairs and Alterations .......... 3,000,000
3 (supplements operating budget at colleges
4 and universities)
5 Miscellaneous Campus Development Projects 1,000,000
6 West Virginia University Campus Development 1,700,000
7 (upgrade and correct fire and life safety
8 systems in various buildings)
9 Kearneysville Experimental Station
10 Research and Equipment Building
11 and Equipment ...................................................... 300,000
12 Marshall University Campus Development .... 300,000
13 (land acquisition-continuing)
14 Fairmont State College Campus Development 830,000
15 (renovation of Colebank gymnasium, demo-
16 lition of old maintenance building, and Fine
17 Arts Building roof replacement)
18 West Virginia Northern Community College
19 Campus Development ............................................ 90,000
20 (major items of equipment for Weirton
21 building)
22 Parkersburg Community College
23 Campus Development ............................................ 575,000
24 (upgrade safety systems, roof repair, site
25 work, major items of equipment,
26 maintenance and shop facilities)
27 West Virginia Network for Educational
28 Telecomputing ...................................................... 503,000
29 (purchase additional computer controllers,
30 disk controllers, and terminal access equip-
31 ment)
32 West Liberty State College Campus
33 Development ....................................................... 100,000
34 (College Hall—auditorium improvements)
35 Jackson’s Mill—Restoration of Old Mill .... 186,000

The total amount of this appropriation shall be paid from
the Special Capital Improvement Fund created by the 1971
Legislature. Projects are to be paid on a cash basis and made
available from the date of passage. Items and projects in this
appropriation are to be started as funds become available and
then only in the listed order of priority.
Any unexpended balances remaining in prior years and 1981-82 appropriations are hereby reappropriated for expenditure during fiscal year 1982-83.

121—Board of Regents—Special Capital Improvement Fund
Acct. No. 8840
TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ........................................... $ 1,672,000
2 The total amount of this appropriation shall be paid from the nonrevolving Capital Improvement Fund created by the 1959 Legislature, as amended.

122—Board of Regents—State System Registration Fee Revenue Bond Construction Fund
Acct. No. 8845
TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and 1981-82 appropriations are hereby reappropriated for expenditure during fiscal year 1982-83.

123—Board of Regents—State System Tuition Fee Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)
Acct. No. 8855
TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Reserve .................................. $ 4,378,000
2 Marshall University Campus Development .......... 4,000,000
3 (Science Building Renovation—Phase II)
4 West Virginia University Campus
5 Development ............................................. 2,884,000
6 (Clark Hall Renovation—Phase III)
7 Glenville State College Campus Development .... 445,000
8 (Library foundation repairs, running track surface replacement, Science Hall roof and boiler replacement)
9
10
11 Bluefield State College Campus Development .... 180,000
(Correct fire-safety violations, upgrade west campus parking lot, minor renovations to Physical Education Building) West Virginia Institute of Technology Campus Development

480,000

(Old Main window replacement, Science Hall laboratory renovation, Engineering Building waterproofing and roof replacement) Potomac State College Campus Development

200,000

(upgrade and collect fire and life safety systems) Shepherd College Campus Development

120,000

The total amount of this appropriation shall be paid from the Special Capital Improvement Fund created by the 1977 Legislature. Projects are to be paid on a cash basis and made available from the date of passage.

Any unexpended balances remaining in prior years and in the 1981-82 appropriations are hereby reappropriated for expenditure in fiscal year 1982-83.

124—Board of Regents—State System Tuition Fee Revenue Bond Construction Fund

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

Any unexpended balances remaining in prior years and 1981-82 appropriations are hereby reappropriated for expenditure during fiscal year 1982-83.

125—Workmen's Compensation Commission

Acct. No. 9000

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$4,698,041</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,562,388</td>
</tr>
<tr>
<td>Equipment</td>
<td>$241,478</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$338,377</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$467,566</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$396,036</td>
</tr>
<tr>
<td>Total</td>
<td>$9,703,886</td>
</tr>
</tbody>
</table>
There is hereby authorized to be paid out of the above appropriation for "Current Expenses" the amount necessary for the premiums on bonds given by the State Treasurer as Bond Custodian for the protection of the Workmen's Compensation Fund. This sum shall be transferred to the Board of Insurance.

126—West Virginia Alcohol Beverage Control Commissioner

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$33,750</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>8,430,342</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>5,564,468</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>61,435</td>
</tr>
<tr>
<td>Equipment</td>
<td>403,600</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>609,457</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>864,155</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>718,613</td>
</tr>
<tr>
<td>Wine License—Unclassified</td>
<td>193,910</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$16,879,730</strong></td>
</tr>
</tbody>
</table>

The total amounts of this appropriation shall be paid from Special Revenue Fund out of liquor revenues.

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

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

127—West Virginia University—Medical School

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$46,467,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>29,368,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>1,645,000</td>
</tr>
</tbody>
</table>
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**APPROPRIATIONS**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equipment</td>
<td>2,767,000</td>
</tr>
<tr>
<td>Intern and Residency Support Program for Community Hospitals</td>
<td>945,000</td>
</tr>
<tr>
<td>Family Practice Residency Support Program</td>
<td>828,000</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$82,520,000</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Capital Outlay” at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

Sec. 3. Supplemental and deficiency appropriations.—From the state fund, general revenue and other designated fund, except as otherwise provided, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Chapter 5A, Article 2 of the Code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty-two, to supplement the 1981-82 appropriations and to be available for expenditure upon date of passage.

128—Governor’s Office—Civil Contingent Fund

Acct. No. 1240

TO BE PAID FROM GENERAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$438,756</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1981-82 is hereby reappropriated for expenditure during the fiscal year 1982-83.

129—West Virginia Board of Regents (Control)

Acct. No. 2790

TO BE PAID FROM GENERAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$250,000</td>
</tr>
</tbody>
</table>

The above item is to be expended for the first semester of summer school.
Section 4. Appropriations of surplus for fiscal year 1981-82.—
The item set forth below in this section is appropriated from the state fund, general revenue, for fiscal year 1981-82, subject to the terms and conditions set forth in this section. By the Executive Budget, dated January thirteen, one thousand nine hundred eighty-two, the Governor transmitted to the Legislature a statement of the state fund, general revenue, for fiscal year 1981-82, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1981-82 will be $1,278,450,000. Therefore, the Governor shall continue to review the revenue in the state fund, general revenue, from the first day of July, one thousand nine hundred eighty-one to the date appropriation under this section may be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue, then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue, under the budget bill for fiscal year 1981-82 and make a finding with respect thereto. In the event that such finding shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue, under the budget bill for fiscal year 1981-82, the Governor may, from any excess of more than five million dollars above the amount required to meet all such appropriations and not to exceed fifteen million dollars above such amount, release the following item, if the determined available funds permit:

Item I. Department of Highways—Secondary Road Maintenance,
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30 surplus funds more than $5,000,000 in excess of $1,278,450,000 and less than $15,000,000 in excess of such $1,278,450,000.

Sec. 5. Reappropriations.—Any unexpended balances of Items V, VI, and IX, in the appropriations made by and under the authority of Sec. 4, Title II of the 1972 Budget Act, and amended under Sec. 4, Title II of the 1977 Budget Act, are hereby reappropriated for expenditure during the fiscal year 1982-83 with the exception of the following accounts: Item IX, Account Nos. 5651-25, 5651-33 and 5651-48.

Any unexpended balances of Items XIII and XV in the appropriations made by and under the authority of Sec. 4, Title II of the 1973 Budget Act and amended under Sec. 4, Title II of the 1977 Budget Act, are hereby reappropriated for expenditure during the fiscal year 1982-83 with exception of the following accounts: Item XV, Account Nos. 5651-58, 5651-59, 5661-08, 5661-09, 5661-10, and 4301-20.

Any unexpended balances of Item I, in the appropriation made by and under Sec. 4, Title II of the 1976 Budget Act are hereby reappropriated for expenditure during the fiscal year 1982-83 with the exception of Account No. 5651-11.

Sec. 6. Appropriations from revenue sharing trust fund.—The following items are hereby appropriated from the Revenue Sharing Trust Fund to be available for expenditure during the fiscal year 1982-83.

131—Revenue Sharing Trust Fund
Department of Corrections
Acct. No. 9719

1 Capital Outlay (Renovation) ......................... $ 1,400,000

132—Revenue Sharing Trust Fund
Office of Economic and Community Development
Acct. No. 9721

1 Emergency Water and Sewerage Assistance .... $ 805,000
133—Revenue Sharing Trust Fund
Department of Natural Resources

Acct. No. 9725

1 Repairs to Structure and Equipment and replacement of Equipment $ 1,000,000

134—Revenue Sharing Trust Fund
Water Development Authority

Acct. No. 9743

1 Capital Outlay—Grants for Water and Sewerage Systems $ 1,750,000
2 Mt. Zion Public Service District—Arnoldsburg Water Project 179,500
3 Kessler-Cross Lanes Public Service District
4 Pax Public Service District
5 Wilderness Public Service District

135—Revenue Sharing Trust Fund
Department of Welfare

Acct. No. 9777

1 Juvenile Detention Center, Eastern Panhandle $ 375,000

136—Revenue Sharing Trust Fund
State Board of Education—Vocational Division

Acct. No. 9780

1 Vocational Education Equipment $ 1,000,000
2 Roof Repair—Tucker County Vocational School 215,000

137—Revenue Sharing Trust Fund
West Virginia State Aeronautics Commission

Acct. No. 9785

1 Airport Matching $ 500,000

Sec. 7. Reappropriations—Revenue sharing trust fund.— Any unexpended balances to the appropriations made by and

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

Any part of or all such amounts as deposited, including deposits through fiscal year one thousand nine hundred eighty-three, are hereby appropriated and may be transferred to any other accounts in the Governor’s Office or to any other departments of state government for disbursement or expenditure.

Sec. 9. Special revenue appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty-three, appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of Chapter 12, Article 2, Section 2 of the Code of West Virginia, one thousand nine hundred thirty-one: Provided, however, That none of the moneys so appropriated by this section shall be available for expenditure except in com-
pliance with and in conformity to the provisions of Chapter 12, Articles 2 and 3, and Chapter 5A, Article 2 of the Code of West Virginia, unless the spending unit has filed with the state director of the budget, the state auditor and the legislative auditor prior to the beginning of each fiscal year:

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

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

Sec. 10. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the Governor on behalf of the State during the fiscal year one thousand nine hundred eighty-three, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated "State Improvement Fund."

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

Sec. 11. Specific funds and collection accounts.—A fund or collection account, which by law is dedicated to a specific use, is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account, and shall be expended according to the provisions of Chapter 12, Article 3 of the Code of West Virginia.

Sec. 12. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.
When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he shall issue his requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 13. Sinking fund deficiencies.—There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia Housing Development Fund which is under the supervision and control of the state sinking fund commission as provided by Chapter 31, Article 18, Section 20b of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, or in the funds of the state sinking fund commission because of the failure of any state agency for either general obligations or revenue bonds or any local taxing district for general obligations bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the state sinking fund commission as may be necessary for these purposes.

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

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

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

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

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

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

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

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

Where former spending units have been absorbed by or combined with other spending units by acts of this Legislature, it is the intent of this act that reappropriation shall be to the succeeding or later spending unit created unless otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.
AN ACT making a supplementary appropriation of public money out of the treasury for payment of claims against the state and the designated agencies thereof and from the balances of the state fund, general revenue, the state road fund and the special revenue funds of the Alcohol Beverage Control Commissioner and the Board of Regents remaining unappropriated for the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two, and to remain in effect through the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-three, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature, at its regular session, one thousand nine hundred eighty-two, the Executive Budget Document wherein is set forth cash balances and estimated expirations of the state fund, general revenue, the state road fund and the special revenue fund of the Alcohol Beverage Control Commissioner and the Board of Regents, available for appropriation in the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two; and

WHEREAS, It appears from such budget that there remains unappropriated sufficient balances in such respective funds available for further appropriation during the current fiscal year one thousand nine hundred eighty-two, a part of which balances are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill be supplemented by adding thereto the following section:

TITLE 2. APPROPRIATIONS.

1 Section 3a. Awards of claims against the state.—There are
hereby appropriated, for the remainder of fiscal year 1981-82 and to remain in effect through June 30, 1983, from the funds as designated, in the amounts as specified, and for the claimants as named in Enrolled House Bill Nos. 1208 and 1209, acts of the Legislature, regular session, 1982, total general revenue funds of $605,124.01; state road funds of $240,569.58; and special revenue funds of $5,298.29 for payment of claims against the state.

The purpose of this supplementary appropriation bill is to supplement the budget bill, enacted at the first extraordinary session of the Legislature, 1981, by adding thereto a new section funding payment of claims against the state and its designated agencies, such appropriation being available for expenditure upon the effective date of the bill and in the current fiscal year of 1981-82, and to remain in effect through fiscal year ending June 30, 1983.

CHAPTER 22
H. B. 2029—By Mr. Polan)

(Passed March 11, 1982; in effect from passage. Approved by the Governor.)

AN ACT making a supplementary appropriation of public money out of the treasury for payment of claims against the state and the designated agencies thereof and from the balances of the state fund, general revenue, the state road fund, and the workmen's compensation fund remaining unappropriated for the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two, and to remain in effect through the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-three, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature, at its regular
session, one thousand nine hundred eighty-two, the Executive Budget Document wherein is set forth cash balances and estimated expirations of the state fund, general revenue, the state road fund and the workmen's compensation fund, available for appropriation in the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-two; and

WHEREAS, It appears from such budget that there remains unappropriated sufficient balances in such respective funds available for further appropriation during the current fiscal year one thousand nine hundred eighty-two, a part of which balances are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-one, known as the budget bill, be supplemented by adding thereto the following section:

TITLE 2. APPROPRIATIONS.

Section 3b. Awards of claims against the state.—There are hereby appropriated, for the remainder of fiscal year 1981-82 and to remain in effect through June 30, 1983, from the funds as designated, in the amounts as specified, and for the claimants as named in Enrolled House Bill Nos. 1905 and 1906, acts of the Legislature, regular session, 1982, total general revenue funds of $61,674.54; state road funds of $2,016.94; and workmen's compensation funds of $9,264.00 for payment of claims against the state.

The purpose of this supplementary appropriation bill is to supplement the budget bill, enacted at the first extraordinary session of the Legislature, 1981, by adding thereto a new section funding payment of claims against the state and its designated agencies, such appropriation being available for expenditure upon the effective date of the bill and in the current fiscal year of 1981-82, and to remain in effect through the fiscal year ending June 30, 1983.
AN ACT to amend and reenact section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article two of said chapter; to amend and reenact sections two and three, article three of said chapter; to amend and reenact section seven, article seven of said chapter; to amend and reenact sections twelve and twelve-a, article eight of said chapter; to further amend said article by adding thereto a new section, designated section twelve-b; and to amend said chapter by adding thereto two new articles, designated articles eight-a and eight-b, all relating to general definitions; defining "branch bank"; relating to general powers and duties of the commissioner of banking of West Virginia; authorizing said commissioner to adopt rules and regulations applicable to consumer loans and credit sales; authorizing said commissioner to approve or disapprove applications to change the location of the principal office of state banking institutions; general powers and duties of the West Virginia board of banking and financial institutions; authorizing said board to approve the reorganization, purchase, merger or consolidation of like financial institutions; authorizing said board to approve or disapprove applications for branch banks; providing that branch banks may be established by the purchase of assets of or merger or consolidation with another banking institution, or by the construction, lease or acquisition of branch bank facilities in an unbanked area; defining "unbanked area"; relating to hearings and orders; permitting banks to establish and maintain branch banks subject to certain limitations and restrictions; setting forth procedures for authorization of branch banks by said board; prescribing fees for examination and investigation of applications for branch banks; authorizing limited off-premises banking facilities; messenger services, armored car service or other courier or delivery service permitted with certain limitations; granting to banking institutions having their principal offices in the state, individually or jointly with one or more other banking institutions or federally insured financial institutions having
their principal offices in this state, or any combination thereof, the right to install, operate and engage in banking transactions by means of one or more customer bank communication terminals; providing that such terminals shall not be considered to be branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; defining "customer bank communication terminal" and "point of sale terminal"; requiring that a bank which installs a customer bank communication terminal make the same available for use by customers of other banking institutions with certain exceptions; prohibiting installation and operation of a customer bank communication terminal by any financial institution which does not have its principal office in this state; exempting the operation of customer-bank communication terminals involved in a nonexclusive access interchange system from the definition of branching; allowing acquisition of the capital stock of one or more banks by a bank holding company if said board does not disapprove such acquisition within ninety days following submission of reports respecting such action with certain exceptions; prescribing fees for examination and investigation of such proposed action; defining "company", "subsidiary", "successor" and "bank holding company"; providing exceptions for the prior notification of said board; providing for the registration and reporting of bank holding companies; prescribing annual registration fees for bank holding companies; providing criminal penalties for violation of certain provisions; community reinvestment; requiring the commissioner and the board to encourage financial institutions to meet the credit needs of their local communities; defining "application for a deposit facility"; requiring the commissioner or board to assess reinvestment in the community in considering applications for a deposit facility; and commissioner to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article two of said chapter be amended and reenacted; that sections two and three, article three of said chapter be amended and reenacted; that section seven, article seven of said chapter be amended and reenacted; that sections twelve and twelve-a, article eight of said
chapter be amended and reenacted; that said article eight be further amended by adding thereto a new section, designated section twelve-b; and that said chapter be amended by adding thereto two new articles, designated articles eight-a and eight-b, all to read as follows:

Article
2. Department of Banking.
3. Board of Banking and Financial Institutions.
7. Regulation of Failing Financial Institutions.
8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.
8A. Acquisitions of Bank Shares.
8B. Community Reinvestment Act.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

1 As used in this chapter, unless the context in which used plainly requires a different meaning:
3 (a) The word "action," in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;
8 (b) The words "bank" and "banking institution" mean a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia or an association heretofore or hereafter authorized to conduct a banking business in West Virginia under the laws of the United States and having its principal office in this state and shall embrace and include a trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state, and shall include industrial banks authorized by article seven, chapter thirty-one of this code, subject to the limitations therein imposed on such industrial banks and further subject to the limitations imposed thereon in this article;
22 (c) The term "banking business" means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen, article four of this chapter and as elsewhere defined by law;
26 (d) The word "board" means the West Virginia board of
27 banking and financial institutions;
28 (e) The words "branch bank" mean an office or other place
29 at which a bank performs any or all banking business. For
30 purposes of this chapter, a branch bank does not include:
31 (1) A bank's principal place of business;
32 (2) Any limited off-premises walk-in or drive-in banking
33 facility authorized by subdivision (2), subsection (a), section
34 twelve, article eight of this chapter; and
35 (3) Any customer bank communication terminals
36 installed and operated pursuant to section twelve-b, article
37 eight of this chapter;
38 (f) The words "commissioner" or "commissioner of
39 banking" mean the commissioner of banking of West
40 Virginia;
41 (g) The word "community" means a city, town or other
42 incorporated area, or, where not so incorporated, a trading
43 area;
44 (h) The word "department" means the department of
45 banking of West Virginia;
46 (i) The words "deputy commissioner" or "deputy
47 commissioner of banking" mean the deputy commissioner of
48 banking of West Virginia;
49 (j) The word "fiduciary" means any trustee, agent,
50 executor, administrator, curator, committee, guardian or
51 conservator, special commissioner, receiver, trustee in
52 bankruptcy, assignee for creditors, or any holder of a similar
53 position of trust or responsibility;
54 (k) The words "financial institutions" mean banks,
55 building and loan associations, industrial banks, industrial
56 loan companies, supervised lenders, credit unions and all
57 other similar institutions, whether persons, firms or
58 corporations, which are by law under the jurisdiction and
59 supervision of the commissioner of banking;
60 (l) The word "officer" when referring to any financial
61 institution, means any person designated as such in the
62 bylaws and includes, whether or not so designated, any
63 executive officer, the chairman of the board of directors, the
64 chairman of the executive committee, and any trust officer,
65 assistant vice president, assistant treasurer, assistant
66 secretary, assistant trust officer, assistant cashier, assistant
67 comptroller, or any other person who performs the duties
68 appropriate to those offices, and the terms "executive officer"
69 as herein used, when referring to banking institutions, means
an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his title or office, being determinative of whether he is an "executive officer";

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

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

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

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

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

(a) Subject to the powers vested in the board by article three of this chapter, the commissioner shall have supervision and jurisdiction over state banks (other than those banks excepted by the provisions of section eleven of this article), industrial loan companies, building and loan associations, supervised lenders, credit unions, and all other persons now or hereafter made subject to his supervision or jurisdiction. All powers, duties, rights and privileges vested in the department are hereby vested in the commissioner. He
shall be the chief executive officer of the department of
banking and shall be responsible for the department’s
organization, services and personnel, and for the orderly and
efficient administration, enforcement and execution of the
provisions of this chapter and all laws vesting authority or
powers in or prescribing duties or functions for the
department or the commissioner.

(b) The commissioner shall:

(1) Maintain the office for the department at the state
capitol, and there keep a complete record of all the
department’s transactions, of the financial conditions of all
financial institutions and such records of the activities of
other persons as the commissioner may deem important.
Notwithstanding any other provision of the code of West
Virginia, heretofore or hereafter enacted, the records relating
to the financial condition of any financial institution and any
information contained therein shall be confidential for the
use of the commissioner and authorized personnel of the
department of banking. No person shall divulge any
information contained in any such records except in response
to a valid subpoena or subpoena duces tecum issued
pursuant to law. The commissioner shall have and may
exercise reasonable discretion as to the time, manner and
extent the other records in his office and the information
contained therein shall be available for public examination.

(2) Require all financial institutions to comply with all the
provisions of this chapter and other applicable laws, or any
rule and regulation promulgated or order issued thereunder.

(3) Investigate all alleged violations of this chapter and all
other laws which he is required to enforce and of any rule and
regulation promulgated or order issued thereunder.

c) In addition to all other authority and powers vested in
the commissioner by provisions of this chapter and other
applicable laws, the commissioner is authorized and
empowered:

(1) To provide for the organization of the department and
the procedures and practices thereof and implement the same
by the promulgation of rules and regulations and forms as
appropriate, which rules and regulations shall be
promulgated in accordance with article three, chapter
twenty-nine-a of this code;

(2) Employ, direct, discipline, discharge and establish
qualifications and duties for all personnel for the department,
including, but not limited to, examiners, assistant examiners, conservators and receivers, to establish the amount and condition of bonds for such thereof as he deems appropriate and to pay the premiums thereon, and if he so elects, to have all such personnel subject to and under the classified service of the state personnel department;

(3) To cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, to inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his opinion may warrant;

(5) To call for and require all such data, reports and information from financial institutions under his jurisdiction, at such times and in such form, content and detail, deemed necessary by him in the faithful discharge of his duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, to supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision thereof, to require financial institutions to:

(A) Maintain their accounts consistent with such regulations as he may prescribe and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against such other risks as he may deem and determine to be necessary and appropriate for the protection of depositors and the public;
(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take such other action as may in his judgment be required of the institution in order to maintain its stability, integrity and security as required by law and all rules and regulations promulgated by him; and

(K) Verify any or all asset or liability accounts.

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or persons and to consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act thereupon in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, to issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings, any such subpoenas or subpoenas duces tecum to be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at such a hearing may be accompanied by an attorney employed by him;

(9) To issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) To study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state, and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and to compile and keep current data thereon to aid and guide him in the administration of the duties of his office;

(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) To implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules and
(13) To foster and encourage a working relationship between the department of banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(14) To provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions, and such other forms and printed materials as may be found by him to be helpful to financial institutions, their shareholders, depositors and patrons, and to make reasonable charges therefor;

(15) To delegate the powers and duties of his office, other than the powers and duties in this subsection hereinafter excepted, to qualified department personnel, who shall act under the direction and supervision of the commissioner and for whose acts he shall be responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other department personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner shall likewise be responsible:

(A) To order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule and regulation promulgated or order issued thereunder;

(B) To order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor thereof; and

(C) To revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article;

(16) To receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove such applications; and

(17) To take such other action as he may deem necessary to enforce and administer the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce, and to
apply to any court of competent jurisdiction for appropriate
orders, writs, processes and remedies.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chapter, the board shall have the power to:

(1) Regulate its own procedure and practice;

(2) Promulgate reasonable rules and regulations to implement any provision of this article, such rules and regulations to be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(3) Advise the commissioner in all matters within his jurisdiction;

(4) Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions, and to report and recommend to the governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as may be by it deemed proper; and

(5) Grant permission and authority to a financial institution:

(A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein, and to comply with all lawful requirements and conditions imposed upon such participants;

(B) To engage in any financial institution activity, services, procedures and practices in which financial institutions of the same type subject to the jurisdiction of the federal government may hereafter be authorized by federal laws, rules or regulations to engage, notwithstanding any contrary provision of this code;

(C) To pay interest on demand deposits of the United States or any agency thereof, if the payment of such interest
Any permission and authority granted by the board pursuant to this subdivision (5) shall cease and terminate upon the adjournment of the next regular session of the Legislature, unless the Legislature shall at such session enact legislation authorizing the financial institution participation, activity, services and procedures or payment of interest with respect to which such permission and authority were granted, in which event such permission and authority shall continue in effect until the effective date of such legislation.

(b) The board shall further have the power, by entering appropriate orders, to:

(1) Restrict the withdrawal of deposits from any financial institution when in the judgment of the board extraordinary circumstances make such restrictions necessary for the protection of creditors of and depositors in the affected institution;

(2) Compel the holder of shares in any corporate financial institution to refrain from voting said shares on any matter when in the judgment of the board such order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard funds of depositors in the institution, or to prevent willful violation of any applicable law or of any rule and regulation or order issued thereunder. In such a case the shares of such a holder shall not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action;

(3) Approve or disapprove applications to incorporate and organize state banking institutions in accordance with the provisions of sections six and seven, article four of this chapter;

(4) Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if such institution shall fail or refuse to comply with any order of the commissioner entered pursuant to the provisions of paragraph (A) or (B), subdivision (14), subsection (c), section four, article two of this chapter, or at the board's election to direct the commissioner to apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order;
(5) Suspend or remove a director, officer or employee of any financial institution who is or becomes ineligible to hold such position under any provision of law or rule and regulation or order, or who willfully disregards or fails to comply with any order of the board or commissioner made and entered in accordance with the provisions of this chapter or who is dishonest or grossly incompetent in the conduct of financial institution business;

(6) To receive from state banking institutions applications to establish branch banks by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution, or by the construction, lease or acquisition of branch bank facilities in an unbanked area; examine and investigate such applications, to hold hearings thereon, and to approve or disapprove such applications, all in accordance with section twelve, article eight of this chapter;

(7) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution in accordance with the provisions of section seven, article seven of this chapter: Provided, That nothing contained in this subdivision shall be construed as permitting any banking institution to engage in any other practice prohibited by section twelve, article eight of this chapter, except as permitted by subdivision (9) of this subsection (b);

(8) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of a national banking association, or merge or consolidate with a national banking association to form a resulting state bank in accordance with the provisions of section seven, article seven of this chapter: Provided, That nothing contained in this subdivision shall be construed as permitting any banking institution to engage in any other practice prohibited by section twelve, article eight of this chapter, except as permitted by subdivision (9) of this subsection (b); and

(9) In addition to any authority granted pursuant to section twelve, article eight of this chapter, incident to the approval of an application pursuant to subdivision (7) or subdivision (8) of this subsection (b), permit the bank the application of which is so approved to operate its banking
business under its name from the premises of the bank the
business and assets of which have been purchased and the
liabilities of which have been assumed by such applicant
bank or with which such applicant bank has merged or
consolidated: Provided, That such permission may be
granted only if the board has made the findings required by
subsection (f), section three of this article and such applicant
bank has no common directors or officers nor common
ownership of stock exceeding ten percent of total
outstanding voting stock with the bank whose business and
assets are being purchased and liabilities assumed or with
whom such applicant bank is being merged.

(10) No provision of this section shall be construed to
alter, reduce or modify the rights of shareholders, or
obligations of a banking institution in regard to its
shareholders, as set forth in section one hundred seventeen,
article one, chapter thirty-one of this code and section seven,
article seven of this chapter and other applicable provisions
of this code.

§31A-3-3. Hearings and orders; entry of order without notice
and hearing.

(a) Subject to the provisions of subsections (e), (f) and (g)
of this section, notice and hearing shall be provided in
advance of the entry of any order by the board.

(1) Such notice shall be given to the financial institution or
person with respect to whom the hearing is to be conducted
in accordance with the provisions of section two, article
seven, chapter twenty-nine-a of this code, and such hearing
and the administrative procedures in connection therewith
shall be governed by all of the provisions of article five,
chapter twenty-nine-a of this code, and shall be held at a time
and place set by the board, but shall not be held less than ten
nor more than thirty days after such notice is given. A hearing
may be continued by the board on its own motion or for good
cause shown.

(2) At any such hearing a party may represent himself or
be represented by an attorney-at-law admitted to practice
before any circuit court of this state.

(b) After any such hearing and consideration of all of the
testimony and evidence, the board shall make and enter an
order deciding the matters with respect to which such
hearing was conducted, which order shall be accompanied by
findings of fact and conclusions of law as specified in section
three, article five, chapter twenty-nine-a of this code, and a
copy of such order and accompanying findings and
conclusions shall be served upon all parties to such hearing,
and their attorneys of record, if any.

(c) In the case of an application for the board's approval to
incorporate and organize a banking institution in this state, as
provided in subdivision (3), subsection (b), section two of this
article, the board shall, upon receipt of any such application,
provide notice to all banking institutions, which in the
manner hereinafter provided, have requested notice of any
such action. The request by any such banking institution to
receive such notice shall be in writing and shall request the
board to notify it of the receipt by the board of any
application to incorporate and organize a banking institution
in this state. A banking institution may, within ten days after
receipt of such notice, file a petition to intervene and shall, if
it so files such petition, thereupon become a party to any
hearing relating thereto before the board.

(d) The board shall have the power and authority to issue
subpoenas and subpoenas duces tecum, administer oaths and
examine any person under oath in connection with any
subject relating to duties imposed upon or powers vested in
the board.

(e) Whenever the board shall find that extraordinary
circumstances exist which require immediate action, it may
forthwith without notice or hearing enter an order taking any
action permitted by subdivisions (1), (2), (4) and (5),
subsection (b), section two of this article. Immediately upon
the entry of such order, certified copies thereof shall be
served upon all persons affected thereby and upon demand
such persons shall be entitled to a hearing thereon at the
earliest practicable time.

(f) Whenever the board shall find that the financial
condition of a state banking institution or a national banking
association constitutes an imminent peril to its depositors,
savings account holders, other customers or creditors, it may
forthwith without notice or hearing enter an order taking any
action permitted by subdivisions (7) and (8), subsection (b),
section two of this article. Immediately upon entry of such
order, certified copies thereof shall be served upon all
persons affected thereby and upon demand such persons
shall be entitled to a hearing thereon at the earliest practicable time.

(g) Whenever the board shall find that the financial condition of a state banking institution or national banking association constitutes an imminent peril to its depositors, savings account holders, other customers or creditors, it may forthwith without compliance with the provisions of section six or seven, article four of this chapter and without notice or hearing enter an order approving or disapproving an application to incorporate a state banking institution which is being formed to purchase the business and assets or assume the liabilities of, or both, or merge or consolidate with, such state banking institution or national banking institution the financial condition of which constitutes an imminent peril to its depositors, savings account holders, other customers or creditors. Immediately upon the entry of such order, certified copies thereof shall be served upon all persons affected thereby and upon demand such persons shall be entitled to a hearing thereon at the earliest practicable time.

(h) Definitions:

(1) The term “imminent peril” means that, because the banking institution is insolvent or about to be insolvent, or there is a probability that the banking institution will not be able to pay its debts when they become due.

(2) A banking institution is “about to be insolvent” when it would be unable to meet the demands of its depositors or is clearly unable, without impairment of capital, by sale of assets or lawful borrowings or otherwise, to realize sufficient liquid assets to pay such debts for which payment is likely, in the immediate future, to be due and demanded in the ordinary course of business.

(3) A banking institution is “insolvent” when it is unable to pay its debts to its depositors and other creditors in the ordinary and usual course of business.

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTITUTIONS.

§31A-7-7. Reorganization, purchase, merger or consolidation of and by financial institutions; conversion of national bank to state bank; obligations remain effective.

Subject to the other provisions of this section, in any voluntary or involuntary proceeding to liquidate a financial
institution for which a receiver has been appointed under this
article, such institution, with the written consent of the
commissioner, may reorganize, reclaim possession of its
assets and continue in business.

Any financial institution may at any time, but only with the
approval of the West Virginia board of banking and financial
institutions in the case of a state banking institution and with
the approval of the commissioner in the case of all other
financial institutions, purchase the business and assets and
assume the liabilities of or merge or consolidate with another
like financial institution. With the approval of the West
Virginia board of banking and financial institutions and in
compliance with all applicable laws of this state and the
United States, any state banking institution may purchase the
business and assets and assume the liabilities of a national
banking association or merge or consolidate with a national
banking association to form a resulting state bank, the terms
and conditions of any such assumption, purchase, merger or
consolidation to be first approved by the board. With the
approval of the West Virginia board of banking and financial
institutions and in compliance with all applicable laws of this
state and the United States, a national banking association
may convert into a state bank. After any such purchase,
merger or consolidation, no other association or corporation
may take or use the name of any financial institution
participating in such purchase, merger or consolidation.

Unless in conflict with a law of the United States of
America, at the completion of any purchase, merger or
consolidation permitted by this section and whether such
financial institution is organized under the laws of this state
or of the United States, the purchasing, merged or
consolidated institution is substituted by operation of law in
the place and stead of each of the participating financial
institutions in all fiduciary relationships, titles, properties,
offices, appointments, rights, powers, duties, obligations and
liabilities of each participating financial institution as trustee,
agent, executor, administrator, guardian, depository,
registrar, transfer agent or other fiduciary and every other
capacity, office or position of each of the participating
financial institutions is by operation of law vested in and
devolved upon the purchasing, merged or consolidated
institution. Such purchasing, merged or consolidated
institution shall take, receive, accept, hold, administer and
discharge all grants, gifts, bequests, devises, conveyances,
trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of or in the name of any such participating institution, whether made, executed or entered before or after such purchase, merger or consolidation and whether to vest or become effective before or after such purchase, merger or consolidation, as fully and to the same effect as if the purchasing, merged or consolidated institution had been named in such deed, deed of trust, will, agreement, order or other instrument instead of such participating institution. All acts taken or performed in its own name or in the name of or in behalf of any financial institution participating in any such purchase, merger or consolidation by any purchasing, merged or consolidated institution as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary are as good, valid and effective as if this section had been applicable thereto at the time of such taking or performance.

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

§31A-8-12. Certain limitations and restrictions imposed on branch banks; procedure for authorization of branch banks; authorization of limited off-premises banking facilities; penalties for violation of section.

§31A-8-12a. Banking from mobile units prohibited; prohibition not to include messenger services; limitation of messenger services.

§31A-8-12b. Installation and operations of customer bank communication terminals permitted.

§31A-8-12. Certain limitations and restrictions imposed on branch banks; procedure for authorization of branch banks; authorization of limited off-premises banking facilities; penalties for violation of section.

1 (a) No banking institution shall:
2 (1) Establish or maintain any branch bank, except as otherwise permitted by this section; or
3 (2) Engage in business at any place other than at its principal office in this state, at a branch bank in this state permitted by this section or at a customer bank communication terminal permitted by section twelve-b of this article: Provided, That at any time any such banking institution and any branch bank established by the purchase of the business and assets and assumption of the liabilities of,
or merger or consolidation with, another banking institution, may operate one and only one off-premises walk-in or drive-in banking facility, on or in conjunction with or entirely separate from a parking lot for the customers of such banking institution, for the purpose of receiving bank deposits of all kinds, cashing checks, making change, selling and issuing money orders and travelers checks and receiving payments on loans, savings and rental accounts, and for no other purposes, provided such off-premises banking facility is located within two thousand feet of the banking house premises or branch bank premises of the banking institution operating such off-premises facility measured between the nearest points of the banking house premises and the premises on which such off-premises banking facility is located. Such off-premises banking facility shall be in addition to any branch bank permitted by this section.

(b) Except for a bank holding company, it shall be unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of each of two or more banks, or to control in any manner the election of a majority of the directors of two or more banks.

(c) A branch bank may be established in accordance with subsection (d) of this section either by:

1. The construction, lease or acquisition of branch bank facilities in an unbanked area; or
2. The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

Notwithstanding any other provision of this chapter to the contrary, subject to and in furtherance of the board's authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subsection (k) of this section, the board may approve or disapprove the application of any state banking institution to establish a branch bank.

(d) During the five-year period beginning ninety days from the effective date of this act, a banking institution may establish:

1. Not more than three branch banks by the purchase of
the business and assets and assumption of the liabilities of, or
merger or consolidation with, another banking institution;
and
(2) In addition to the forgoing, a banking institution may
establish one branch by the construction, lease or acquisition
of a facility in an unbanked area within the county in which is
situate its principal office. Not more than two branches may
be established in this manner in each unbanked area. For
purposes of this section an area is an “unbanked area” if no
banking institution or branch bank created by merger and
consolidation exists within the limits of an incorporated
municipality.
(e) The principal office of a banking institution on the
effective date of this act shall continue to be the principal
office of such banking institution for purposes of establishing
branch banks under this section, notwithstanding any
subsequent change in the location of such banking
institution’s principal office.
(f) It shall be unlawful for any banking institution to
establish any branch bank by the purchase of the business
and assets and assumption of the liabilities of, or merger or
consolidation with, another banking institution if such
establishment would cause the combined deposits of the
resulting banking institution to exceed ten percent of the
total deposits of all banking institutions in this state as
determined by the latest available reports of condition as
compiled by the Federal Deposit Insurance Corporation.
(g) Any banking institution which is authorized to
establish branch banks pursuant to this section may provide
the same banking services and exercise the same powers at
each such branch bank as may be provided and exercised at
its principal banking house.
(h) The board shall, upon receipt of any application to
establish a branch bank, provide notice of such application to
all banking institutions. A banking institution may, within
ten days after receipt of such notice, file a petition to
intervene and shall, if it so files such petition, thereupon
become a party to any hearing relating thereto before the
board.
(i) The commissioner shall prescribe the form of the
application for a branch bank and shall collect an
examination and investigation fee of one thousand dollars for
each filed application for a branch bank that is to be
established by the construction, lease or acquisition of a branch bank facility in an unbanked area and two thousand five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. The board shall complete the examination and investigation within ninety days from the date on which such application and fee are received, unless the board requests in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution, in which event such ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of such request and the date such additional information and disclosures are received.

(j) Upon completion of the examination and investigation with respect to such application, the board shall, if a hearing be required pursuant to subsection (k) of this section, forthwith give notice and hold a hearing pursuant to the following provisions:

(1) Notice of such hearing shall be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board but shall not be less than ten nor more than thirty days after such notice is given.

(2) At any such hearing a party may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state.

(3) After such hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

(k) No state banking institution may establish a branch bank until the board, following an examination,
An investigation, notice and hearing, enters an order approving an application for that branch bank: Provided, That no such hearing shall be required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (h) of this section. The order shall be accompanied by findings of fact that:

1. Public convenience and advantage will be promoted by the establishment of the proposed branch bank;
2. Local conditions assure reasonable promise of successful operation of the proposed branch bank and of those banks and branches thereof already established in the community;
3. Suitable physical facilities will be provided for the branch bank; and
4. The applicant state banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish by regulation.

Any party who is adversely affected by the order of the board shall be entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the supreme court of appeals in the manner provided in article six, chapter twenty-nine-a of this code.

Pursuant to the resolution of its board of directors and with the prior approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days' prior public notice given in such form and manner as the commissioner prescribes.

Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen, article eight of this chapter.

§31A-8-12a. Banking from mobile units prohibited; prohibition not to include messenger services; limitation of messenger services.

It is illegal for any banking institution, building and loan association, industrial loan company or supervised lender to
conduct its business in a facility that is a mobile unit not permanently attached to the real estate upon which it is located, except that such mobile units may be used as temporary banking quarters pending construction of a permanent bank building on the same or adjacent property thereto if a charter for said bank has previously been approved. This section shall not be construed or interpreted to prohibit a financial institution from providing messenger services to its customers by which items are received by mail, armored car service or other courier or delivery service for subsequent deposit: Provided, That all such messenger services are confined to the territorial boundaries of the county in which the principal office of such financial institution is located or within twenty-five miles of the principal office of such financial institution.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

(a) Any banking institution as defined in section two, article one of this chapter, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon thirty days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals. Any banking institution which installs and operates a customer bank communication terminal:

(1) Shall make such customer bank communication terminal available for use by other banking institutions; and

(2) May make such customer bank communication terminal available for use by other federally insured financial institutions, all in accordance with regulations promulgated by the commissioner. Such customer bank communication terminals shall not be considered to be branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; nor shall the operation of such customer bank communication terminals to communicate with and permit financial transactions to be carried out through a nonexclusive access interchange system be considered to make any banking institution which is part of such a nonexclusive access interchange system to have illegal branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking
facilities.

(b) Notwithstanding the provisions of subdivision (1), subsection (a) of this section, a customer bank communication terminal located on the premises of the principal office or branch bank of a banking institution or on the premises of an authorized off-premises facility need not be made available for use by any other banking institution or its customers.

(c) For the purposes of this section "customer bank communication terminal" means any electronic device or machine, together with all associated equipment, structures and systems, including, without limitation, point of sale terminals, through or by means of which a customer and a banking institution may engage in any banking transactions, whether transmitted to the banking institution instantaneously or otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer's benefit. All transactions initiated through a customer bank communication terminal shall be subject to verification by the banking institution.

(d) For the purposes of this section "point of sale terminal" means a customer bank communication terminal used for the primary purpose of either transferring funds to or from one or more deposit accounts in a banking institution or segregating funds in one or more deposit accounts in a banking institution for future transfer, or both, in order to execute transactions between a person and his customers incident to sales, including, without limitation, devices and machines which may be used to implement and facilitate check guaranty and check authorization programs.

(e) Except for customer bank communication terminals located on the premises of the principal office or a branch bank of the banking institution or on the premises of an authorized off-premises walk-in or drive-in banking facility, a customer bank communication terminal shall be unattended or attended by persons not employed by any banking institution utilizing the terminal: Provided, That

(1) Employees of the banking institution may be present
69 at such terminal not located on the premises of an authorized
70 off-premises facility solely for the purposes of installing,
71 maintaining, repairing and servicing same; and
72 (2) For a period of time not to exceed two months after the
73 opening of any such terminal, a banking institution may
74 provide an employee to instruct and assist customers in the
75 operation thereof.
76 (f) The commissioner shall prescribe by regulation the
77 procedures and standards regarding the installation and
78 operation of customer bank communication terminals,
79 including, without limitation, the procedure for the sharing
80 thereof.

ARTICLE 8A. ACQUISITIONS OF BANK SHARES.

§31A-8A-1. Legislative findings and purposes.
§31A-8A-4. Acquisition of bank shares; when prior notification of board
necessary; exemptions.
§31A-8A-5. Registration and reporting of bank holding companies; annual
fee.

§31A-8A-1. Legislative findings and purpose.
1 After a review of the structure of banking organizations in
2 the state of West Virginia, and after full consideration of the
3 complex issues involved, the Legislature hereby finds and
4 determines that:
5 (a) Well managed and financially sound banking
6 institutions are essential to the financial well being of the
7 citizens, and the promotion of the future economic and
8 industrial growth and development, of this state;
9 (b) The formation of bank holding companies will
10 strengthen and supplement traditional banking services and
11 facilitate the development of the type of banking institutions
12 that are necessary for the economic and industrial growth and
13 development of this state;
14 (c) It is in the best interests of this state and its citizens for
15 the board to have the power and authority to disapprove the
16 acquisition of a bank by a bank holding company when the
17 board determines that such acquisition would result in a
18 monopoly, substantially lessen competition, or be contrary to
19 the best interests of the shareholders or customers of the
20 bank involved;
(d) The deposits of the citizens of this state are a substantial and valuable resource which should serve the economic and industrial growth and development needs, and the consumer needs of the citizens of this state; and since the board could not effectively make a determination that the control of deposits of the citizens of this state by bank holding companies with any banking subsidiaries located outside this state would be used for the above enumerated local needs of this state's citizenry, a bank holding company with any bank subsidiary located outside this state shall be prohibited from acquiring, directly or indirectly, five percent or more of the interest in or assets of, any bank or bank holding company located in this state; and

(e) It is in the best interests of this state and its citizens to prevent excessive concentration or control of the deposit resources of this state by prohibiting acquisitions of banks by bank holding companies which would thus control more than ten percent of this state's total banking deposits.


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

(a) “Company” means any corporation, partnership, business trust, association or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state;

(b) “Subsidiary”, with respect to a specific bank holding company, means:

(1) Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly wholly owned or controlled by such bank holding company, or is held by it with power to vote,

(2) Any company the election of a majority of whose directors is controlled in any manner by such bank holding company, or

(3) Any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as
The commissioner may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this article.


(a) (1) Except as provided in subdivision (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company pursuant to this article.

(2) Any company has control over a bank or over any company if:

(A) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote twenty-five percent or more of any class of voting securities of the bank or company;

(B) The company controls in any manner the election of a majority of the directors or trustees of the bank or company;

or

(C) The board determines, after notice and a hearing pursuant to the provisions of section three, article three of this chapter, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under subdivision (2) (C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than five percent of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this article, other than a proceeding under subdivision (2) (C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote five percent or more of any class of voting securities of the bank or
company, or had already been found to have control in a
proceeding under subdivision (2) (C).
(5) Notwithstanding any other provision of this
subsection:
(A) No bank and no company owning or controlling
voting shares of a bank is a bank holding company by virtue
of its ownership or control of shares in a fiduciary capacity,
except as provided in subdivisions (2) and (3), subsection (b)
of this section. For the purpose of the preceding sentence,
bank shares shall not be deemed to have been acquired in a
fiduciary capacity if the acquiring bank or company has sole
discretionary authority to exercise voting rights with respect
thereto; and
(B) No company is a bank holding company by virtue of
its ownership or control of shares acquired in securing or
collecting a debt previously contracted in good faith, until
five years after the date of acquisition.
(6) For the purposes of this article, any successor to a bank
holding company shall be deemed to be a bank holding
company from the date on which the predecessor company
became a bank holding company.
(b) For the purposes of this article:
(1) Shares owned or controlled by any subsidiary of a
bank holding company shall be deemed to be indirectly
owned or controlled by such bank holding company;
(2) Shares held or controlled directly or indirectly by
trustees for the benefit of:
(A) A company,
(B) The shareholders or members of a company, or
(C) The employees (whether exclusively or not) of a
company, shall be deemed to be controlled by such company;
and
(3) Shares transferred by any bank holding company (or
by the company, which, but for such transfer, would be a
bank holding company) directly or indirectly to any
transferee that is indebted to the transferor, or has one or
more officers, directors, trustees or beneficiaries in common
with or subject to control by the transferor, shall be deemed
to be indirectly owned or controlled by the transferor unless
the board, after notice and a hearing pursuant to the
provisions of section three, article three of this chapter,
determines that the transferor is not in fact capable of
controlling the transferee.
§31A-8A-4. Acquisition of bank shares; when prior notification of board necessary; exemptions.

(a) It shall be unlawful, prior to ninety days following the date of the submission to the board of complete, true and accurate copies of the reports required under federal laws or regulations pursuant to Title 12, United States Code, §§1841-1850 (being the act of Congress entitled the Bank Holding Company Act of 1956, as amended), and the payment of an examination and investigation fee to the board of two thousand five hundred dollars:

1. For any action to be taken that causes any company to become a bank holding company;
2. For any action to be taken that causes any bank to become a subsidiary of a bank holding company;
3. For any bank holding company to acquire direct or indirect ownership or control of any shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than five percent of the voting shares of such bank;
4. For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;
5. For any bank holding company to merge or consolidate with any other bank holding company; or
6. For any bank holding company to take any action which would violate the Federal Bank Holding Company Act.

(b) The provisions of subsection (a) of this section shall not apply to:

1. Shares acquired by a bank
   A. In good faith in a fiduciary capacity, except where shares are held under a trust that constitutes a company as defined in section two of this article and except as provided in subdivisions (2) and (3), subsection (b), section three of this article; or
   B. In the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the effective date of this act in securing or collecting any such previously contracted debt shall be disposed of within a period of five years from the date on which they were acquired; or
2. Additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to...
such acquisition. For the purpose of the preceding sentence, bank shares acquired after the effective date of this act shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior notice to the board if the board, upon notice and submission of information in form and content as it shall approve, filed within ninety days after the shares are acquired, approved retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within five years after issuance of the order of disapproval.

(c) If, within ninety days from the date of submission pursuant to subsection (a) of this section, after notice and a hearing pursuant to the provisions of section three, article three of this chapter, the board enters an order disapproving the proposed action described in subdivision (1), (2), (3), (4), (5) or (6), subsection (a) of this section, it shall be unlawful to take such action. The board shall disapprove the proposed action described in subdivision (1), (2), (3), (4), (5) or (6), subsection (a) of this section on the following grounds:

(1) The action would result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any section of this state;

(2) The action would have the effect in any section of the state of substantially lessening competition, or would tend to create a monopoly or in any other manner would be in restraint of trade, unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the community to be served; or

(3) Taking into consideration the financial and managerial resources and further prospects of the company or companies and the banks concerned, the action would be contrary to the best interests of the shareholders or customers of the bank whose shares are affected by such action.

(d) It shall be unlawful for any bank holding company to acquire shares of a bank if such acquisition would cause the combined deposits of all banks in this state with respect to which it is a bank holding company to exceed ten percent of total bank deposits in this state as determined by the latest
available reports of condition as compiled by the Federal Deposit Insurance Corporation.

(e) Notwithstanding any other provisions of this section, no proposed action described in subdivision (1, (2), (3), (4), (5) or (6), subsection (a) of this section shall be approved if such approval will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, five percent or more of the interest in or assets of a bank or bank holding company located in this state if the operations of any banking subsidiary of such bank holding company are located outside this state.

(f) It shall be unlawful for any bank holding company to acquire any interest in a nonbank subsidiary which engages in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor.

(g) Nothing contained in this section shall affect the obligation of any person or company to comply with the provisions of any order of any court or the commissioner entered prior to the effective date of this act.

§31A-8A-5. Registration and reporting of bank holding companies; annual fee.

(a) For the purposes of this section, other than subsection (f), a "bank holding company" shall include, in addition to a bank holding company defined in subdivision (1), subsection (a), section three of this article, any other bank holding company subject to regulation under Title 12 United States Code, §§1841-1850 (being the act of Congress entitled the Bank Holding Company Act of 1956, as amended), which has acquired or established a place of business in this state or a subsidiary which has a place of business in this state.

(b) On the first day of July, one thousand nine hundred eighty-two, and annually thereafter on dates established by the commissioner, each bank holding company shall register with the commissioner on forms provided or prescribed by him, which shall include such information with respect to the financial condition, operation, management and inter-company relationships of the bank holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this article.
(c) The commissioner is authorized to issue such regulations and orders as may be necessary to enable him or the board to administer and carry out the purposes of this article and prevent evasions thereof.

(d) The commissioner from time to time may require reports under oath to keep him informed as to whether the provisions of this article and such regulations and orders thereunder issued by him have been complied with, may make examinations of each bank holding company and each subsidiary thereof, and shall, as far as possible, use the reports of examination made by the comptroller of the currency, federal deposit insurance corporation, or the board of governors of the federal reserve system for the purposes of this section.

(e) Bank holding companies and subsidiaries or affiliates thereof shall be regulated, controlled and examined by the commissioner to the same extent that he regulates, controls and examines state banks and other financial institutions under his jurisdiction. The commissioner is hereby authorized to promulgate rules and regulations and registration procedures for the regulation, examination and control of bank holding companies doing business in this state.

(f) On the first day of January, one thousand nine hundred eighty-three, and thereafter annually on the same date, each bank holding company shall pay an annual registration fee to the commissioner based upon the total amount of bank deposits in banks with respect to which such company is a bank holding company. The commissioner shall prescribe by regulations the annual registration fee, but such fee shall not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars. The payment of such registration fee shall be accompanied by a report on forms prescribed by the commissioner. The commissioner is authorized to issue such regulations as may be necessary to enable him to administer the collection of the registration fee.


Any violation of any provision of this article shall constitute a misdemeanor offense, which, upon conviction thereof, shall be punishable by applicable penalties as provided in section fifteen, article eight of this chapter.
ARTICLE 8B. COMMUNITY REINVESTMENT ACT.

§31A-8B-1. Short title.

This article may be cited as the "West Virginia Community Reinvestment Act."

§31A-8B-2. Legislative findings and purpose.

(a) The Legislature finds that:

(1) Banking institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) The convenience and needs of communities include the need for credit services as well as deposit services; and

(3) Banking institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

(b) It is the purpose of this article to require the commissioner and the board to use their authority when examining or investigating banking institutions or their bank holding companies, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

§31A-8B-3. Application for a deposit facility; definition.

The term "application for a deposit facility" means an application to the commissioner or board for:

(a) A charter for a state bank;

(b) The relocation of the principal office or a branch of a state bank;

(c) The establishment of a branch bank in an unbanked area requiring approval under section twelve, article eight of this chapter;

(d) The merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a banking institution requiring approval under section seven, article seven of this chapter; or, the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a banking institution requiring approval under section twelve, article eight of this chapter.
16 (e) The acquisition of shares in, or the assets of, a state banking institution requiring approval under article eight-a of this chapter.

§31A-8B-4. Assessment of the institution's reinvestment in the community.

1 In connection with its examination or investigation of a banking institution or bank holding company, the commissioner or board shall:
2 (a) Assess the institution's record of meeting the credit needs of its entire community, including low-and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and
3 (b) Take such record into account in its evaluation of an application for a deposit facility by such institution.

§31A-8B-5. Rules and regulations.

1 Regulations to carry out the purposes of this article shall be promulgated by the commissioner.

CHAPTER 24

(Com. Sub. for H. B. 1724—By Mr. Greer and Mr. Cook)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve, thirteen and fourteen, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eleven, article one, chapter seven; and section seven, article thirteen-a, chapter sixteen of said code, all relating to level of expenditure needing bids by the state, counties and public service districts; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; purchasing in open market on competitive bids; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; exception by the state; purchasing in open market or competitive bids by the counties; and acquisition and operation of district properties by public service districts.
Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen and fourteen, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section eleven, article one, chapter seven of said code, be amended and reenacted; and that section seven, article thirteen-a, chapter sixteen of said code, be amended and reenacted, all to read as follows:

Chapter

5. Department of Finance and Administration.
7. County Commissions and Officers.

CHAPTER 5. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops.

§5A-3-13. Purchasing in open market on competitive bids.

§5A-3-14. Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

§5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops.

1 The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed five thousand dollars. No spending unit shall issue a series of requisitions which would circumvent this five thousand dollar maximum. Bids shall be obtained by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the department or agency making the requisition is located. Such notice shall be so published within the fourteen days next preceding the final date of submitting bids. The notice may also be published by any other advertising medium the director may deem advisable. The director may also solicit sealed bids by sending request by mail to prospective suppliers and by posting notice on a bulletin board.
in his office: *Provided*, That the director shall, without com-
petitive bidding, purchase commodities and printing produced
and offered for sale by nonprofit workshops, as defined in
section one, article one of this chapter, which are located in
this state: *Provided, however*, That such commodities and
printing shall be of a price and quality comparable to other
commodities and printing otherwise available.

§5A-3-13. **Purchasing in open market on competitive bids.**

1 The director may make a purchase of commodities and
2 printing of five thousand dollars or less in amount in the
3 open market, but such purchase shall, wherever possible,
4 be based on at least three competitive bids.

5 The director may authorize spending units to purchase com-
6 modities and printing in the amount of one thousand dollars in
7 the open market without competitive bids.

§5A-3-14. **Bids to be based on standard specifications; period for
alteration or withdrawal of bids; awards to lowest
responsible bidder; uniform bids; record of bids; and
exception.**

1 Bids shall be based on the standard specifications promul-
gated and adopted in accordance with the provisions of section
five of this article, and shall not be altered or withdrawn after
the appointed hour for the opening of such bids. All open
market orders, purchases based on advertised bid requests or
contracts made by the director or by a state department shall
be awarded to the lowest responsible bidder, taking into con-
sideration the qualities of the articles to be supplied, their con-
formity with specifications, their suitability to the requirements
of the government and the delivery terms. Any or all bids may
be rejected. If all bids received on a pending contract are for
the same unit price or total amount, the director shall have
authority to reject all bids, and to purchase the required com-
modities and printing in the open market, if the price paid in
the open market does not exceed the bid prices.

16 All bidders submitting bid proposals to the purchasing di-
vision are required to submit an extra or duplicate copy to
the state auditor. Both copies must be received at the respec-
tive offices prior to the specified date and time of the bid
20 openings. The failure to deliver or the nonreceipt of these bid forms at either of these offices prior to the appointed date and hour are grounds for rejection of the bids. In the event of any deviation between the copies submitted to the pur- chasing division and the state auditor, such bids as to which there is such deviation shall be rejected, if the deviation relates to the quantity, quality or specifications of the commodities or printing to be furnished or to the price therefor or to the date of delivery or performance. After the award of the order or contract, the director, or someone appointed by him for that purpose, shall indicate upon the successful bid and its copy in the office of the state auditor that it was the success- ful bid. Thereafter, the copy of each bid in the possession of the director and the state auditor shall be maintained as a public record by both of them, shall be open to public inspec- tion in the office of both the director and the state auditor and shall not be destroyed by either of them without the written consent of the legislative auditor: Provided, That the board of regents may certify in writing to the director the need for a specific item essential to a particular usage either for instruc- tional or research purposes at an institution of higher educa- tion and the director upon review of such certification may provide for the purchase of said specific items in the open market without competitive bids.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§ 7-1-11. Purchasing in open market or competitive bids.

1 County commissions may make a purchase of commodities and printing of five thousand dollars or less in amount in the open market, but a purchase of and contract for commodities and printing over five thousand dollars shall be based on competitive bids, except in case of emergency.

6 The county commission of any county is hereby authorized and empowered to promulgate rules and regulations govern- ing the procedure of competitive bids.

9 As used in this section, the terms “commodities” and “print-
CHAPTER 16. PUBLIC HEALTH.

ARTICLE 16. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICES.

§16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district and shall have power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than five thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the district. The publication shall not be less than ten days prior to the making of any such contract. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.

CHAPTER 25

(Com. Sub. for H. B. 1322—By Mr. Smith and Mr. Burdette)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to requiring the state tax commission­
er, as chief inspector of public offices, to take certain
bids on municipal audits from private accountants and to
contract with said accountants for said audits in certain situa­
tions where less costly.

**Be it enacted by the Legislature of West Virginia:**

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

**ARTICLE 9. SUPERVISION OF PUBLIC OFFICES.**

§6-9-7. Examinations into affairs of local public officers.

(a) The chief inspector shall have power by himself, or
by any person appointed by him to perform the service, to
examine into all financial affairs of every local governmental
office or political subdivision and all boards, commissions,
authorities, agencies or other offices created under authority
thereof and shall make such an examination at least once a
year, if practicable. On every such examination, inquiry
shall be made as to the financial conditions and resources of
the agency having jurisdiction over the appropriations and
levies disbursed by the office and whether the requirements
of the constitution and statutory laws of the state and the
ordinances and orders of the agency have been properly
complied with and also inquire into the methods and ac­
curacy of the accounts and such other matters of audit and
accounting as the chief inspector may prescribe. He or
any authorized assistant may issue subpoenas and compulsory
process, direct the service thereof by any sheriff, compel the
attendance of witnesses and the production of books and
papers at any designated time and place, selected in their
respective county, and administer oaths. If any person re­
fuses to appear before the chief inspector or his authorized
assistant when required so to do, refuses to testify on any
matter or refuses to produce any books or papers in his
possession or under his control, he is guilty of a misdemeanor,
and, upon conviction thereof, shall be fined not more than one hundred dollars and imprisoned in the county jail not more than six months. Willful false swearing in such examinations is punishable as such. A report of each examination shall be made in duplicate, one copy to be filed in the office of the state tax commissioner and one in the auditing department of the agency. If any such examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be filed with the proper legal authority of the agency, the prosecuting attorney of the county wherein the agency is located and with the attorney general for such legal action as is proper. At the time of the filing of such certified audit, the chief inspector shall notify the proper legal authority, the prosecuting attorney and the attorney general in writing of his recommendation as to the legal action that the chief inspector considers proper, whether criminal prosecution or civil action to effect restitution, or both. If the proper legal authority or prosecuting attorney, within nine months of the receipt of such certified audit and recommendations, refuses, neglects or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final conclusion, in accordance with such recommendations, the chief inspector may institute the necessary proceedings or participate therein and prosecute the proceedings in any court of the state to a final conclusion.

(b) When requested by the governing body of a municipality, the chief inspector shall take bids on the audit of that municipality, and if he finds that a reputable certified public accountant or registered public accountant outside the state tax department can conduct the audit at a cost lower than if the department did it, and if said accountant meets all criteria set forth by the chief inspector, he shall contract with such accountant for such audit: Provided, That the chief inspector may elect to conduct the audit of a municipality with one or more members of his audit staff where, in the opinion of the chief inspector, a special or unusual situation exists.
CHAPTER 26

(Com. Sub. for S. B. 208—By Ash and Mr. Honecker)

[Passed March 10, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five, six, ten, fifteen, twenty-one and twenty-two, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the conduct of bingo for charitable or public service activity or endeavor; defining terms; revising limits on prizes which licensees may award; eliminating age restrictions for persons who play bingo; revising licensing procedures for the state fair bingo license; and reducing license fee for state fair bingo license.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, six, ten, fifteen, twenty-one and twenty-two, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 20. CHARITABLE BINGO.

§47-20-2. Definitions.
§47-20-4. Annual license; conditions on holding of games.
§47-20-5. Limited occasion license; conditions on holding of games.
§47-20-6. License fee and exemption from taxes.
§47-20-10. Limits on prizes awarded—general provisions.
§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
§47-20-22. State fair bingo license; rules and regulations.

§47-20-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Bingo" means the game wherein participants pay consideration for the use of one or more cards bearing several rows of numbers no two of which cards played in any one game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one by one, and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are
using. The player who first announces that he has covered a
predetermined sequence or pattern which had been
preannounced for that game is, upon verification of such,
declared the winner of that game.
(b) "Bingo occasion" or "occasion" means a single
gathering or session at which a series of one or more
successive bingo games is conducted by a single licensee.
(c) "Charitable or public service activity or endeavor"
means any bona fide activity or endeavor which directly
benefits a number of people by:
(1) Assisting them to establish themselves in life as
contributing members of society through education or
religion; or
(2) Relieving them from disease, distress, suffering,
constraint, or the effects of poverty; or
(3) Increasing their comprehension of and devotion to the
principles upon which this nation was founded and to the
principles of good citizenship; or
(4) Making them aware of or educating them about issues
of public concern so long as the activity or endeavor is not
aimed at influencing legislation or supporting or
participating in the campaign of any candidate for public
office; or
(5) By lessening the burdens borne by government or
voluntarily supporting, augmenting or supplementing
services which government would normally render to the
people; or
(6) Providing or supporting nonprofit community
activities for youth, senior citizens or the disabled; or
(7) Providing or supporting nonprofit cultural or artistic
activities.
(d) "Charitable or public service organization" means a
bona fide, not for profit, tax-exempt, benevolent, educational,
philanthropic, humane, patriotic, civic, religious, fraternal or
eleemosynary incorporated or unincorporated association or
organization; or a volunteer fire department, rescue unit or
other similar volunteer community service organization or
association; but does not include any nonprofit association or
organization, whether incorporated or not, which is organized
primarily for the purposes of influencing legislation or
supporting or promoting the campaign of any candidate for
public office.
An organization or association is tax-exempt if it is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c) (3), 501(c) (4), 501(c) (8), 501(c) (10), 501(c) (19) or 501(d) of the Internal Revenue Code.

(e) "Commissioner" means the state tax commissioner.

(f) "Concession" means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in subdivision (2), subsection (a), section twelve, article seven, chapter sixty of this code to the contrary, "concession" includes beverages which are regulated by and shall be subject to the provisions of chapter sixty of this code: Provided, That in no case may the sale or the consumption of alcoholic beverages or nonintoxicating beer be permitted in any area where bingo is conducted.

(g) "Conduct" means to direct the actual playing of a bingo game by activities including, but not limited to, handing out bingo cards, collecting fees, drawing the numbers, announcing the numbers, posting the numbers, verifying winners and awarding prizes.

(h) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a bingo occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to section fifteen of this article.

(i) "Gross proceeds" means all moneys collected or received from the conduct of bingo at all bingo occasions held by a licensee during a license period; this term shall not be deemed to include any moneys collected or received from the sale of concessions at bingo occasions.

(j) "Joint bingo occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by two or more licensees.

(k) "Licensee" means any organization or association granted an annual, limited occasion or state fair bingo license pursuant to the provisions of this article.

(l) "Net proceeds" means all moneys collected or received from all the conduct of bingo at bingo occasions held by a
licensee during a license period after payment of expenses authorized by sections ten, thirteen, fifteen and twenty-two of this article; this term shall not be deemed to include moneys collected or received from the sale of concessions at bingo occasions.

(m) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

(n) "Patron" means any individual who attends a bingo occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or plays any bingo games.

(o) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (d) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (c) of this section. "Qualified recipient organization" includes without limitation any licensee which is organized and functions exclusively as provided in this subdivision.

§47-20-4. Annual license; conditions on holding of games.

A charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it: Provided, That for purposes of this section the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide for the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the one license allowed under this section is granted. An annual license is valid for one year from the date of issuance and entitles only the licensee to hold no more than two bingo occasions per week. No two or more organizations may hold a joint bingo occasion under any annual licenses. No bingo occasion held pursuant to an annual license may exceed six hours' duration.
20. A licensee shall display its annual bingo license conspicuously at the location where the bingo occasion is held.
21. All bingo occasions shall be open to the general public.

§47-20-5. Limited occasion license; conditions on holding of games.
1. A limited occasion license is valid only for the time period specified in the application and entitles only the licensee to hold a bingo occasion once every twenty-four hours for a time period not to exceed two weeks. Two or more organizations may hold a joint bingo occasion provided each participating organization has been granted a limited occasion bingo license for such jointly held occasion. No bingo occasion held pursuant to a limited occasion license may exceed twelve hours in duration. Each charitable or public service organization which desires to hold bingo occasions pursuant to this section, or any of its auxiliaries or other organizations otherwise affiliated with it shall obtain a limited occasion license notwithstanding the fact that it holds a valid annual license: Provided, That no licensee which holds an annual license may obtain more than one limited occasion license.
2. Only three limited occasion licenses per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, none of which hold an annual license. For purposes of this section the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the three licenses allowed under this section are granted.
3. A licensee shall display its limited occasion license conspicuously at the location where the bingo occasion is held.
4. All bingo occasions shall be open to the general public.

§47-20-6. License fee and exemption from taxes.
1. (a) A license fee shall be paid to the tax commissioner for annual licenses in the amount of one hundred dollars, except that for bona fide senior citizen organizations the fee is fifty dollars. A license fee shall be paid to the tax commissioner for
a limited occasion license in the amount of twenty-five dollars. A license fee of five hundred dollars shall be paid to the tax commissioner for a state fair license as provided in section twenty-two of this article. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state, and no county or municipality or other political subdivision of this state is empowered to impose a license or franchise tax or fee.

(b) The gross proceeds derived from the conduct of bingo occasions are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. The licensee is exempt from payment of consumers sales and service taxes and use taxes on all purchases for use or consumption in the conduct of a bingo occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of bingo cards: Provided, That the exemption provided in this subsection does not apply to state fair bingo proceeds.

§47-20-10. Limits on prizes awarded—General provisions.
Except as provided otherwise in section twenty-two of this article, the total prizes awarded by a licensee during the period of a license may not exceed in value fifty percent of the gross proceeds collected during said period or one hundred thousand dollars, whichever amount shall be less: Provided, That notwithstanding the foregoing limitation, the total prizes awarded by a licensee during the period of a license may be equal to or less than five dollars times the number of games played. The total prizes awarded by a licensee, or in the aggregate by two or more limited occasion licensees holding a joint bingo occasion, for any bingo occasion held pursuant to an annual or limited occasion license may not exceed in value two thousand dollars.
Prizes may be money or merchandise other than beer, nonintoxicating beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are merchandise, the value assigned to them is their fair market value at the time they are won.

§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions,
not to exceed ten percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to:

(1) Rent paid for the use of the premises: Provided, That a copy of the rental agreement was filed with the bingo license application and any changes thereto were filed within ten days of being made;

(2) The cost of custodial services;

(3) The cost to the licensee organization for equipment and supplies used to conduct the bingo occasion;

(4) The cost to the licensee organization for advertising the bingo occasion; and

(5) The cost of hiring security personnel.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section ten of this article, may be paid out of the gross proceeds of the conduct of bingo.

(c) The cost of any refreshments, souvenirs, or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the bingo occasion. The licensee shall expend all net bingo proceeds and any interest earned thereon for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the bingo occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a bingo license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No gross proceeds from any bingo operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, improvement, maintenance or repair of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) Any licensee which, in good faith, finds itself unable to comply with the requirements of this provision shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to

The Legislature declares that the net proceeds of any bingo game which accrue to the West Virginia state fair are considered used for charitable or public service purposes as defined in section two of this article. Any proceeds allowed by the state fair board to be paid to or retained by persons who conduct bingo occasions at the state fair are deemed to be expenses incurred by the state fair board.

§47-20-22. State fair bingo license; rules and regulations.

The West Virginia state fair board may apply annually to the tax commissioner for a state fair bingo license to provide for the conduct of bingo occasions at the state fair. The license shall permit the state fair board to have one or more persons conduct bingo occasions at the state fair who have conducted bingo occasions on a regular basis for at least two years prior to the date of the state fair board's application. A license fee of five hundred dollars shall be paid to the tax commissioner for the state fair bingo license. The provisions of sections ten, eleven, twelve, fourteen, fifteen and twenty-eight of this article do not apply to a state fair bingo license. No state fair bingo license may be issued unless the application includes a copy of any lease or agreement entered into between the state fair board and the persons who are to conduct bingo occasions at the state fair. The state fair board may adopt reasonable rules and regulations, not inconsistent with or in violation of the provisions of this article, to govern the holding of bingo occasions at the state fair.
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; to amend and reenact sections six, nine and twenty-one, article two-a of said chapter, relating to reparation awards to victims of crimes generally; providing an exception to the limitation on judges of the court of claims as to the number of days served per fiscal year; providing for appropriations for the expenses of the attorney general; providing for an annual report by the court of claims; and removing code language which enabled the attorney general to withdraw amounts from the crime victims reparation fund.

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; and that sections six, nine and twenty-one, article two-a of said chapter be amended and reenacted, all to read as follows:

Article

2. Claims Against the State.

2A. Reparation Awards to Victims of Crimes.

ARTICLE 2. CLAIMS AGAINST THE STATE.

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

1 Each judge of the court shall receive one hundred fifteen dollars for each day actually served, and actual expenses incurred in the performance of his duties. The number of days served by each judge shall not exceed one hundred in any fiscal year, except by authority of the joint committee on government and finance: Provided, That in computing the number of days served, days utilized solely for the exercise of duties assigned to judges and commissioners by the provisions of article two-a of this chapter shall be disregarded.

10 Requisitions for compensation and expenses shall be accom-
panied by sworn and itemized statements, which shall be filed with the auditor and preserved as public records. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions, and in necessary travel.

ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.

§ 14-2A-6. Appointment and compensation of commissioners and judges serving under this article.


§ 14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

(a) The court of claims, with the approval of the president of the Senate and the speaker of the House of Delegates, shall appoint at least three court of claims commissioners to hear claims for an award of reparations and to approve awards of reparations pursuant to the provisions of this article. Each commissioner shall serve at the pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims.

(b) The court of claims shall fix the compensation of the court of claims commissioners in an amount not exceeding the compensation for judges of the court of claims. Compensation of judges and commissioners for services performed under this article, and actual expenses incurred in the performance of duties as judges and commissioners under this article shall be paid out of the crime victims reparation fund.

(c) The limitation period of one hundred days in section eight, article two of this chapter pertaining to time served by the judges of the court of claims shall not apply to the provisions of this article.


The attorney general shall represent the interests of the state in all claims coming before the court of claims or a commissioner. Expenses of the attorney general relating to carrying out his duties under this article shall be payable from

The court of claims shall prepare and transmit annually to the governor and the Legislature a report of the activities of the court of claims under this article. The report shall include the number of claims filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied including the average size of claims and awards; the balance in the crime victims reparation fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the court of claims, compensation of judges, commissioners and court personnel and the amount awarded as attorneys' fees.

CHAPTER 28

(Com. Sub. for H. B. 1208—By Mr. Holmes and Mr. Otte)

[Passed February 8, 1982; 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 payment 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; the department of corrections; and the farm management commission, to be moral obligations of the state and directing payment thereof.

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

(a) Claim against the Board of Regents:

TO BE PAID FROM GENERAL REVENUE FUND

<table>
<thead>
<tr>
<th>Company/Naming</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Walter J. Klein Company, Ltd.</td>
<td>$350.00</td>
</tr>
</tbody>
</table>

(b) Claims against the Department of Corrections:

TO BE PAID FROM GENERAL REVENUE FUND

<table>
<thead>
<tr>
<th>Company/Naming</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>C. K. Agarwal</td>
<td>$70.00</td>
</tr>
<tr>
<td>Hassan Amjad</td>
<td>$295.00</td>
</tr>
<tr>
<td>Appalachian Mental Health Center</td>
<td>$4,400.00</td>
</tr>
<tr>
<td>Appalachian Regional Hospital</td>
<td>$1,690.00</td>
</tr>
<tr>
<td>Ayerst Laboratories</td>
<td>$411.57</td>
</tr>
<tr>
<td>Beckley Radiology Associates</td>
<td>$323.50</td>
</tr>
<tr>
<td>Bernhardt's Clothing, Inc.</td>
<td>$3,215.38</td>
</tr>
<tr>
<td>Boury, Inc.</td>
<td>$1,984.28</td>
</tr>
<tr>
<td>C. H. James &amp; Co.</td>
<td>$1,149.18</td>
</tr>
<tr>
<td>Craig Motor Service Co., Inc.</td>
<td>$256.35</td>
</tr>
<tr>
<td>Saryu P. Dani</td>
<td>$40.00</td>
</tr>
<tr>
<td>Dentists Fee Office</td>
<td>$300.00</td>
</tr>
<tr>
<td>Department of Employment Security</td>
<td>$24,996.90</td>
</tr>
<tr>
<td>Claim Number</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>14</td>
<td>Dorsey Laboratories</td>
</tr>
<tr>
<td>15</td>
<td>Elkins Dental Lab</td>
</tr>
<tr>
<td>16</td>
<td>Equitable Gas, Inc.</td>
</tr>
<tr>
<td>17</td>
<td>Firestone Tire and Rubber Company (The)</td>
</tr>
<tr>
<td>18</td>
<td>Gall's, Inc.</td>
</tr>
<tr>
<td>19</td>
<td>Grafton City Hospital</td>
</tr>
<tr>
<td>20</td>
<td>Greenbrier Physicians, Inc.</td>
</tr>
<tr>
<td>21</td>
<td>Greenbrier Valley Hospital</td>
</tr>
<tr>
<td>22</td>
<td>Henry Schein, Inc.</td>
</tr>
<tr>
<td>23</td>
<td>Eugene E. Hutton, Jr.</td>
</tr>
<tr>
<td>24</td>
<td>Independent Dressed Beef Company, Inc.</td>
</tr>
<tr>
<td>25</td>
<td>J. D. Woodrum, M.D., Inc.</td>
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<tr>
<td>26</td>
<td>E. L. Jimenez</td>
</tr>
<tr>
<td>27</td>
<td>Johnson's Boiler Sales &amp; Service, Inc.</td>
</tr>
<tr>
<td>28</td>
<td>Marlinton Electric Co., Inc.</td>
</tr>
<tr>
<td>29</td>
<td>McNeil Pharmaceutical Company</td>
</tr>
<tr>
<td>30</td>
<td>Memorial General Hospital Association</td>
</tr>
<tr>
<td>31</td>
<td>Mercer Radiology, Inc.</td>
</tr>
<tr>
<td>32</td>
<td>Monongahela Power Company</td>
</tr>
<tr>
<td>33</td>
<td>Norwich-Eaton Pharmaceuticals</td>
</tr>
<tr>
<td>34</td>
<td>Nova Rubber Company, Inc.</td>
</tr>
<tr>
<td>35</td>
<td>Ohio Valley Medical Center</td>
</tr>
<tr>
<td>36</td>
<td>Orthopedic Clinic, Inc.</td>
</tr>
<tr>
<td>37</td>
<td>B. Payman</td>
</tr>
<tr>
<td>38</td>
<td>Perrmont Chemical Company</td>
</tr>
<tr>
<td>39</td>
<td>Pfizer, Inc.</td>
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<tr>
<td>40</td>
<td>Physicians Associates, Inc.</td>
</tr>
<tr>
<td>41</td>
<td>Physicians Fee Office</td>
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<tr>
<td>42</td>
<td>Picker Corporation</td>
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<tr>
<td>43</td>
<td>Princeton Community Hospital</td>
</tr>
<tr>
<td>44</td>
<td>Princeton Internists</td>
</tr>
<tr>
<td>45</td>
<td>Raleigh General Hospital, Inc.</td>
</tr>
<tr>
<td>46</td>
<td>Raleigh Orthopaedic Assoc., Inc.</td>
</tr>
<tr>
<td>47</td>
<td>Reed &amp; Carnrick</td>
</tr>
<tr>
<td>48</td>
<td>Reynolds Memorial Hospital, Inc.</td>
</tr>
<tr>
<td>49</td>
<td>Seneca Mental Health-Mental Retardation Council, Inc.</td>
</tr>
<tr>
<td></td>
<td>Claims against the Farm Management Commission:</td>
</tr>
<tr>
<td>---</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>83</td>
<td>(50) Adnan N. Silk-Beckley Neurosurgical Clinic ........................................ $ 80.00</td>
</tr>
<tr>
<td>84</td>
<td>(51) Rajendra P. Singh .......................................................... $ 215.00</td>
</tr>
<tr>
<td>85</td>
<td>(52) SK&amp;F Co. ................................................................. $ 20.82</td>
</tr>
<tr>
<td>86</td>
<td>(53) SK&amp;F Lab Co. ............................................................... $ 399.60</td>
</tr>
<tr>
<td>87</td>
<td>(54) Southern Chemical Co. ......................................................... $ 1,688.50</td>
</tr>
<tr>
<td>88</td>
<td>(55) Summers Community Clinic ...................................................... $ 103.02</td>
</tr>
<tr>
<td>89</td>
<td>(56) Summers County Hospital ........................................................ $ 13,341.30</td>
</tr>
<tr>
<td>90</td>
<td>(57) Tri-State Ambulance and Rentals ................................................ $ 569.00</td>
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<tr>
<td>91</td>
<td>(58) Union Oil Company of California .............................................. $ 12,156.20</td>
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<tr>
<td>92</td>
<td>(59) Upjohn Company (The) ........................................................... $ 791.07</td>
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<tr>
<td>93</td>
<td>(60) Wechsler Coffee Corporation ................................................... $ 3,669.12</td>
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<tr>
<td>94</td>
<td>(61) West Virginia Paper, Inc. ....................................................... $ 3,478.25</td>
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<tr>
<td>95</td>
<td>(62) White Sulphur Pharmacy, Inc. .................................................. $ 399.30</td>
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<tr>
<td>96</td>
<td>(63) Xerox Corporation ............................................................... $ 2,801.94</td>
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<tr>
<td>97</td>
<td><strong>(c)</strong> Claims against the Farm Management Commission:</td>
</tr>
<tr>
<td>98</td>
<td><strong>TO BE PAID FROM GENERAL REVENUE FUND</strong></td>
</tr>
<tr>
<td>99</td>
<td>---</td>
</tr>
<tr>
<td>100</td>
<td>(1) Agway, Inc. ................................................................. $ 412.07</td>
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<tr>
<td>101</td>
<td>(2) Beckley Veterinary Hospital, Inc. ............................................. $ 188.00</td>
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<tr>
<td>102</td>
<td>(3) Bessire &amp; Company, Inc. ........................................................ $ 540.70</td>
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<tr>
<td>103</td>
<td>(4) Blue Grass Equipment, Inc. ...................................................... $ 117.40</td>
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<tr>
<td>104</td>
<td>(5) Boso Agri-Center, Inc. ........................................................... $ 8,406.83</td>
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<td>105</td>
<td>(6) Buckeye Gas Products Company ................................................ $ 95.39</td>
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<tr>
<td>106</td>
<td>(7) Frank J. Cary—Mountainland Animal Hospital ................................ $ 3,344.55</td>
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<tr>
<td>107</td>
<td>(8) Cecil E. Jackson Equipment, Inc. ............................................... $ 65.06</td>
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<tr>
<td>108</td>
<td>(9) Corder Tractor &amp; Equipment Company .......................................... $ 210.52</td>
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<tr>
<td>109</td>
<td>(10) G. Jay Crissman ....................................................................... $ 265.00</td>
</tr>
<tr>
<td>110</td>
<td>(11) Darwin O. Fike, d/b/a Surge Sales &amp; Service ................................ $ 208.30</td>
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<tr>
<td>111</td>
<td>(12) James L. Davison .................................................................... $ 122.25</td>
</tr>
<tr>
<td>112</td>
<td>(13) Dearing Brothers, Inc. ................................................................ $ 591.34</td>
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<tr>
<td>113</td>
<td>(14) Eglon Farm Service ................................................................... $ 16,709.35</td>
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<tr>
<td>114</td>
<td>(15) Elkins Machine &amp; Electric Co. .................................................... $ 556.00</td>
</tr>
<tr>
<td>115</td>
<td>(16) Elkins Tire Company ................................................................... $ 140.76</td>
</tr>
<tr>
<td>116</td>
<td>(17) Firestone Stores ........................................................................ $ 119.50</td>
</tr>
<tr>
<td>117</td>
<td>(18) Firestone Tire and Rubber Company (The) ..................................... $ 51.60</td>
</tr>
</tbody>
</table>
Claim Numbers

121  (19) Robert M. Flesher—Upshur Veterinary Hospital  $ 55.00
122  (20) Frank’s Service Center  $ 110.43
123  (21) Fullen Fertilizer Company, Inc.  $ 453.65
124  (22) Fulton-Thompson Tractor Sales, Inc.  $ 675.00
125  (23) Gibson’s Scale Service  $ 677.40
126  (24) Greenbrier Tractor Sales, Inc.  $ 4,717.67
127  (25) Greenbrier Valley Farm Center, Inc.  $ 3,212.90
128  (26) Hedlund Manufacturing Co., Inc.  $ 1,622.07
129  (27) Henderson Implement Company  $ 618.14
130  (28) Heritage Equipment Company  $ 268.12
131  (29) Humberson Farm Equipment  $ 595.67
132  (30) J. H. Holt Plumbing and Heating, Inc.  $ 1,000.40
133  (31) Jefferds Corporation  $ 747.24
134  (32) Jenkins Concrete Products Co.  $ 940.50
135  (33) Joalde Sales & Service  $ 35.87
136  (34) Johnston Alternator & Trailer Sales, Inc.  $ 425.54
137  (35) Keefer’s Service Center  $ 3,219.64
138  (36) Lawson Products, Inc.  $ 922.28
139  (37) Lewis & Burge, Inc.  $ 170.96
140  (38) Liggetts’ Supply  $ 638.48
141  (39) Marshall County Cooperative, Inc.  $ 78.00
142  (40) Mason County D.H.I.A., Inc.  $ 527.46
143  (41) McGhee & Company  $ 13.25
144  (42) Mountain Mobile Milling  $ 200.75
145  (43) Nasco  $ 48.65
146  (44) North Central Dairy Herd Improvement Association  $ 270.07
147  (45) Overnite Transportation Co.  $ 28.20
148  (46) Pickens Hardware Co., Inc.  $ 239.49
149  (47) Pioneer Harvestore Systems, Inc.  $ 205.34
150  (48) Skyland Hospital Supply  $ 77.00
151  (49) Southern States Elkins Coop., Inc.  $ 24,591.24
152  (50) Southern States Marlinton, Cooperative  $ 29.85
153  (51) Swisher’s Feed and Supply  $ 2,068.40
154  (52) John R. Tomlinson—Fairlea Animal Hospital  $ 249.00
155  (53) Town & Country Veterinary Clinic  $ 1,588.50
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 adjutant general; alcohol beverage control commissioner; board of regents; department of education; department of finance and administration; department of health; department of highways; department of motor vehicles; department of natural resources; department of public safety; nonintoxicating beer commission; office of the state auditor-representation of needy persons fund; office of the supreme court of appeals; and the state tax department, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and 2 recommendations reported to it by the court of claims con-
3 cerning various claims against the state and agencies thereof,
4 and in respect to each of the following claims the Legislature
5 adopts those findings of fact as its own, and hereby declares
6 it to be the moral obligation of the state to pay each such
7 claim in the amount specified below, and directs the auditor
8 to issue warrants for the payment thereof out of any fund
9 appropriated and available for the purpose.
10
11 (a) *Claim against the Adjutant General:*
12 TO BE PAID FROM GENERAL REVENUE FUND
13
14 (1) Southern Chemical Co. $ 98.76
15
16 (b) *Claim against the Alcohol Beverage Control Commis-
17 sioner:*
18 TO BE PAID FROM SPECIAL REVENUE FUND
19
20 (1) Leonard A. Cerullo $ 4,559.24
21
22 (c) *Claims against the Board of Regents:*
23 TO BE PAID FROM SPECIAL REVENUE FUND, AS DESIGNATED
24
25 (1) General Communications Company
26 from Acct. No. 8720-05 $ 400.00
27 (2) Charles W. Jones
28 from Acct. No 8600-20 $ 213.75
29 (3) Lundia, Myers Industries, Inc.
30 from Acct. No. 8835-39 $ 125.30
31
32 (d) *Claims against the Department of Education:*
33 TO BE PAID FROM GENERAL REVENUE FUND
34
35 (1) Robert Lee Fulks, Jr. $ 684.95
36 (2) Ernest E. Lowe $ 195.00
37 (3) McDonnell Douglas Corporation $ 28,132.00
38
39 (e) *Claim against the Department of Finance and Adminis-
40 tration:*
41 TO BE PAID FROM GENERAL REVENUE FUND
42
43 (1) Carter’s Safety Systems, Inc. $ 974.92
34. (f) **Claim against the Department of Health:**

**TO BE PAID FROM GENERAL REVENUE FUND**

35. (1) Clifford Cupp $137.25

37. (g) **Claims against the Department of Highways:**

**TO BE PAID FROM STATE ROAD FUND**

39. (1) Mitchell F. Adkins $82.47

40. (2) Larry Allen Bayer $104.81

41. (3) Katherine H. Boyd $57.64

42. (4) Matta L. Brady, Admin. of the Estate of Shell C. Brady, deceased $203,347.94

44. (5) Jacqueline E. Delazio $169.72

45. (6) James W. Dixon and Doris A. Dixon $14,500.00

46. (7) Arley Don Dodd $427.09

47. (8) Robert Friel $3,500.00

48. (9) Alonzo Gibson $480.00

49. (10) H & A Coal & Hauling, Inc. $1,000.00

50. (11) L. D. Hall $800.00

51. (12) Christine E. Henderson and Rodgers Paul Henderson $1,305.00

53. (13) Patricia Ann Jarboe $1,040.00

54. (14) Robert N. Jarboe $3,676.00

55. (15) Robert N. Jarboe, as next friend of Stephanie Jarboe $50.00

57. (16) Kanawha Valley Regional Transportation Authority $3,744.80

59. (17) Bert Kessler $262.98

60. (18) Donald C. Master $1,000.00

61. (19) Thomas E. McNamee $423.21

62. (20) Franklin D. Mullins $1,500.00

63. (21) Jimmy Polk $392.67

64. (22) James Scott Sadler $595.44

65. (23) Daniel Serge, Jr. $139.05

66. (24) Charles R. Shaffer $255.33

67. (25) Ronald P. Stewart $259.76

68. (26) Charles E. Tedrow $220.00

69. (27) United States Post Office $61.30
(h) **Claim against the Department of Motor Vehicles:**

TO BE PAID FROM STATE ROAD FUND

(1) West Virginia Automobile & Truck Dealers Association $1,174.37

(i) **Claims against the Department of Natural Resources:**

TO BE PAID FROM GENERAL REVENUE FUND

(1) W. H. Ballard, II and G. David Brumfield $3,593.00
(2) Zummach-Peerless Chemical Coatings Corp. $918.29

(j) **Claims against the Department of Public Safety:**

TO BE PAID FROM GENERAL REVENUE FUND

(1) Howard Uniform Company $244.30
(2) Thomas G. Kimble $230.03

(k) **Claim against the Nonintoxicating Beer Commission:**

TO BE PAID FROM GENERAL REVENUE FUND

(1) Crosby Beverage Co., Inc. $688.42

(l) **Claims against the Office of the State Auditor-Needy Persons Fund:**

TO BE PAID FROM GENERAL REVENUE FUND

(1) Richard H. Brumbaugh $124.00
(2) Richard D. Frum $38.32
(3) Charles E. McCarty $240.00
(4) Daniel A. Oliver $1,098.50
(5) Eugene J. Sellaro, Jr. $433.95
(6) Sterl F. Shinaberry $1,500.00
(7) Robert J. Smith $125.00
(8) Gerard R. Stowers $198.50
(9) James D. Terry $1,177.50
(10) Gerald M. Titus, Jr. $940.85
(11) Raymond H. Yackel $1,317.50

(m) **Claim against the Supreme Court of Appeals:**

TO BE PAID FROM GENERAL REVENUE FUND

(1) County Commission of Webster County $3,020.00
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 employment security; department of finance and administration; department of health; department of highways; department of natural resources; division of vocational rehabilitation; human rights commission; nonintoxicating beer commission; supreme court; state auditor-West Virginia public legal services counsel; state treasurer; and the workmen's compensation fund, to be moral obligations of the state and directing payment thereof.

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

(a) Claim against the Board of Regents:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Energy Technology Consultants, Inc.
   D & M Weather Service ...................................... $ 350.00

(b) Claim against the Department of Employment Security:

TO BE PAID FROM EMPLOYMENT SECURITY FUND

(1) Region V—Regional Education
   Service Agency .................................................. $ 2,145.25

(c) Claims against the Department of Finance
   and Administration:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Eastman Kodak Company ................................. $ 4,391.50
(2) Johnson Controls, Inc. ................................. $ 6,536.75

(d) Claim against the Department of Health:

TO BE PAID FROM GENERAL REVENUE FUND

(1) Hawes Electric Co. ........................................... $ 1,126.00

(e) Claims against the Department of Highways:

TO BE PAID FROM STATE ROAD FUND

(1) Oncie E. Archer, Missouri Thompson,
   William Thompson, Truman Thompson,
   Grover Thompson, Chloie Batten,
   Nellie Summerville, Etta Ingram,
   Dora Life, and Helen Lockhart ......................... $ 787.41
(2) Auto Tech, Inc. .............................................. $ 325.50
(3) Mason M. Clay ................................................ $ 150.00
<table>
<thead>
<tr>
<th>Claim</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) Barbara B. Krantz</td>
<td>$104.39</td>
</tr>
<tr>
<td>(5) John F. Tomblyn</td>
<td>$649.64</td>
</tr>
<tr>
<td>(f) Claim against the Department of Natural Resources:</td>
<td></td>
</tr>
<tr>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
<td></td>
</tr>
<tr>
<td>(1) Firestone Tire &amp; Rubber Company</td>
<td>$852.72</td>
</tr>
<tr>
<td>(g) Claim against the Division of Vocational Rehabilitation:</td>
<td></td>
</tr>
<tr>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
<td></td>
</tr>
<tr>
<td>(1) Wheeling Multi-Service Center, Inc.</td>
<td>$5,220.00</td>
</tr>
<tr>
<td>(h) Claim against the Human Rights Commission:</td>
<td></td>
</tr>
<tr>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
<td></td>
</tr>
<tr>
<td>(1) Jeffrey O. McGeary</td>
<td>$110.64</td>
</tr>
<tr>
<td>(i) Claims against the Nonintoxicating Beer Commission:</td>
<td></td>
</tr>
<tr>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
<td></td>
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<tr>
<td>(1) Henry F. Ortlieb Brewing Co.</td>
<td>$3,004.87</td>
</tr>
<tr>
<td>(2) State Distributing Company</td>
<td>$11,068.92</td>
</tr>
<tr>
<td>(j) Claims against the Supreme Court—General Judicial:</td>
<td></td>
</tr>
<tr>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
<td></td>
</tr>
<tr>
<td>(1) Charles E. McCarty</td>
<td>$55.00</td>
</tr>
<tr>
<td>(2) The Michie Company</td>
<td>$56.13</td>
</tr>
<tr>
<td>(k) Claim against the Office of the State Auditor—West Virginia Public Legal Services Council:</td>
<td></td>
</tr>
<tr>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
<td></td>
</tr>
<tr>
<td>(1) Larry N. Sullivan</td>
<td>$170.00</td>
</tr>
<tr>
<td>(l) Claim against the Office of the State Treasurer:</td>
<td></td>
</tr>
<tr>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
<td></td>
</tr>
<tr>
<td>(1) William P. Knight</td>
<td>$152.94</td>
</tr>
<tr>
<td>(m) Claim against the Workmen's Compensation Fund:</td>
<td></td>
</tr>
<tr>
<td>TO BE PAID FROM WORKMEN'S COMPENSATION FUND</td>
<td></td>
</tr>
<tr>
<td>(1) A. B. Dick Company</td>
<td>$9,264.00</td>
</tr>
</tbody>
</table>
The Legislature finds that the above moral obligations and appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 31
(H. B. 1906—By Mr. Holmes and Mr. Otte)
[Passed March 11, 1982; 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 payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of corrections; the farm management commission; and the insurance department, to be moral obligations of the state and directing payment thereof.

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

(a) *Claims against the Department of Corrections:*

<table>
<thead>
<tr>
<th>TO BE PAID FROM GENERAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Bennett Publishing Company</td>
</tr>
<tr>
<td>(2) Charleston Area Medical Center</td>
</tr>
<tr>
<td>(3) Clarksburg Drug Company</td>
</tr>
<tr>
<td>(4) E. R. Squibb &amp; Sons, Inc.</td>
</tr>
<tr>
<td>(5) Exxon Company, USA</td>
</tr>
<tr>
<td>(6) Greenbrier Physicians, Inc.</td>
</tr>
<tr>
<td>(7) Greenbrier Valley Hospital</td>
</tr>
<tr>
<td>(8) Matthew Bender &amp; Company</td>
</tr>
<tr>
<td>(9) Physicians Fee Office</td>
</tr>
<tr>
<td>(10) Chandra P. Sharma</td>
</tr>
<tr>
<td>(11) T. H. Mirza, M.D., Inc.</td>
</tr>
<tr>
<td>(12) Taylor County Commission</td>
</tr>
<tr>
<td>(13) West Virginia School of Osteopathic Medicine Clinic, Inc.</td>
</tr>
</tbody>
</table>

(b) *Claims against the Farm Management Commission:*

<table>
<thead>
<tr>
<th>TO BE PAID FROM GENERAL REVENUE FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Bill Henning, Inc.</td>
</tr>
<tr>
<td>(2) Motor Car Supply Company</td>
</tr>
<tr>
<td>(3) Southern States Cooperative</td>
</tr>
<tr>
<td>(4) Superior Parts Service, Inc.</td>
</tr>
</tbody>
</table>
AN ACT to amend and reenact section three, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the number of members to which the state is entitled in the House of Representatives of the United States Congress and arranging the counties of the state into districts for the election thereof.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter 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. APPORTIONMENT OF REPRESENTATION.

§1-2-3. Congressional districts.

1 The number of members to which the state is entitled in the House of Representatives of the Congress of the United States shall be apportioned among the several counties of the state, arranged into four congressional districts, numbered as follows:

6 First District: Brooke, Doddridge, Hancock, Harrison, Marion, Marshall, Ohio, Pleasants, Ritchie, Taylor, Tyler, Wetzel and Wood.


13 Third District: Boone, Braxton, Calhoun, Clay, Gilmer,
AN ACT to amend and reenact sections two hundred four and two hundred ten, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the state board of pharmacy; recommendations to the Legislature; schedules of controlled substances.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.
§60A-2-210. Schedule IV.

§60A-2-204. Schedule I.

1  (a) The controlled substances listed in this section are included in Schedule I.
2  (b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers. esters, ethers, and salts is possible within the specific chemical designation:
3       (1) Acetylmethadol;
4       (2) Allylprodine;
5       (3) Alphacetylmethadol;
6       (4) Alphameprodine;
7       (5) Alphamethadol;
8       (6) Alpha-methylfentanyl;
9       (7) Benzethidine;
10      (8) Betacetylmethadol;
11      (9) Betameprodine;
12      (10) Betamethadol;
13      (11) Betaprodine;
14      (12) Clonitazene;
15      (13) Dextromoramide;
16      (14) Diampromide;
17      (15) Diethylthiambutene;
18      (16) Difenoxin;
19      (17) Dimenoxadol;
20      (18) Dimepheptanol;
21      (19) Dimethylthiambutene;
22      (20) Dioxaphetyl butyrate;
23      (21) Dipipanone;
24      (22) Ethylmethylthiambutene;
25      (23) Etonitazene;
(24) Etoxeridine;
(25) Fenethylline;
(26) Furethidine;
(27) Hydroxypethidine;
(28) Ketobemidone;
(29) Levomoramide;
(30) Levophenacylmorphan;
(31) Morpherialine;
(32) Noracymethadol;
(33) Norlevorphanol;
(34) Normethadone;
(35) Norpipanone;
(36) Phenadoxone;
(37) Phenampromide;
(38) Phenomorphin;
(39) Phenoperidine;
(40) Piritramide;
(41) Proheptazine;
(42) Properidine;
(43) Propiram;
(44) Racemoramide;
(45) Sufentanil;
(46) Tilidine;
(47) Trimeperidine.

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

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except HCL Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophone;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Phoclodine;
(23) Thebacon.

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

(1) 2,5-dimethoxyamphetamine; also known by these trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;
(2) 3,4-methylenedioxymphetamine;
(3) 4-bromo-2,5-dimethoxyamphetamine or 4-bromo-2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;
(4) 5-methoxy-3, 4-methylenedioxyamphetamine;
(5) 4-methoxyamphetamine; also known by these trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA;
(6) 3,4,5-trimethoxyamphetamine;
(7) Bufotenine; known also by these trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin; mappine;
(8) Diethyltryptamine; known also by these trade and other names: N-N-Diethyltryptamine; "DET";
(9) Dimethyltryptamine; known also by the name "DMT";
(10) 4-methyl-2,5-dimethoxy amphetamine; known
also by these trade and other names: 4-methyl-2,5-di-
methoxy-a-methylphenethylamine; "DOM"; "STP";

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

(12) Lysergic acid diethylamide;

(13) Marihuana;

(14) Mescaline;

(15) Peyote; meaning all parts of the plant presently
classified botanically as Lophophora Williamsii Lematre,
whether growing or not; the seeds thereof; any extract
from any part of such plant; and every compound,
manufacture, salt, derivative, mixture or preparation of
such plant, its seeds or extracts;

(16) N-ethyl-3-piperidyl benzilate;

(17) N-methyl-3-piperidyl benzilate;

(18) Psilocybin;

(19) Psilocyn;

(20) Tetrahydrocannabinols; including synthetic equiv-
alsents of the substances contained in the plant or in the
resinous extractives of Cannabis or synthetic substances,
derivatives and their isomers with similar chemical
structure and pharmacological activity such as the fol-
lowing:

Delta 1
Cis or trans tetrahydrocannabinol, and their optical
isomers;

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

Delta 3, 4
Cis or trans tetrahydrocannabinol tetrahydrocannabi-
nol, and their optical isomers;

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

TPCP;
(22) Ethylamine analog of phencyclidine . . . Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N - ( 1 - phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(23) Pyrrolidine analog of phencyclidine . . . Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

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

§60A-2-210. Schedule IV.

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

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

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

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

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

(1) Diethylpropion;
(2) Mazindol;
(3) Phentermine;
(4) Pemoline (including organometallic complexes and chelates thereof);
(5) Pipradrol;
(6) SPA (-1)-1-dimethylamino-1, 2-diphenylethane).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Dextropropoxyphene (alpha - (+) - 4 - dimethylamino-1, 2 - diphenyl - 3 - methyl - 2 - propionoxybutane).

(f) Not more than 1 milligram of difenoquin and not less than 25 micrograms of atropine sulfate per dosage unit.
CHAPTER 34
(S. B. 106—By Mr. Ash and Mr. Gilligan)

[Passed March 13, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two, relating to continuing and reestablishing the department of corrections.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-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 two, to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of department; findings.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the department of corrections should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the department of corrections shall continue to exist until the first day of July, one thousand nine hundred eighty-eight.

CHAPTER 35
(Com. Sub. for H. B. 1223—By Mr. Albright)

[Passed February 25, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the reporter of the West Virginia supreme court of appeals or the West Virginia supreme court of appeals to direct the number of
copies of the reports of the decisions of the supreme court of appeals to be published; providing for the greater number of copies directed to be published if the reporter and the supreme court of appeals do not agree as to the number of copies to be specified in the publication contract; and providing that in no case shall the number of copies published exceed one thousand five hundred.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article three, 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 3. PURCHASING DIVISION.

§5A-3-27. Publication of reports of supreme court of appeals.

1 Notwithstanding any of the provisions of this article, the official reporter of the supreme court of appeals shall have charge and supervision of the printing and binding of the reports of the decisions of the supreme court of appeals of the state, and shall contract for their publication in the same manner that the director of the purchasing division contracts under sections eleven through twenty-one of this article. Such contract shall provide for the publication of such number of copies as the reporter and the supreme court of appeals may jointly direct. If the reporter and the supreme court of appeals do not agree on the number of copies for which the publication contract shall provide, the contract shall provide for the publication of the greater number of copies directed by either the reporter or the supreme court of appeals. In no event shall the number of copies published exceed one thousand five hundred. Copies of the reports of the decisions of the supreme court of appeals shall be on such paper and be bound in accordance with directions and specifications specified by the reporter by and with the concurrence of the court. The size of type and page shall be prescribed by the reporter with the concurrence of the court. A volume shall be published according to the terms of the contract whenever ordered by the court. The reporter shall secure the copyright of each volume for the benefit of the state. The reports shall be styled "West Virginia Reports."

The printing and binding of the reports shall be done under
the direction of and in the manner prescribed by the reporter, subject to the control of the court. The reporter shall prefix to the printed report of each case the dates when the same was submitted and decided. Each volume shall, if practicable, contain the reports of at least eighty cases decided by the court, and shall contain approximately one thousand pages unless otherwise ordered by the court, exclusive of the index and table of cases reported and cited. Proof sheets shall be furnished by the printer to the reporter and to each judge of the court, and such corrections and modifications shall be made by the printer as the reporter or any of the judges shall direct. If the work is not done in the manner required by law, the reporter shall not approve the volume and shall not accept it.

The reports of the decisions of the supreme court of appeals may be published in pamphlet form in advance of the publication of the bound volumes of the “West Virginia Reports,” periodically, or at such times as may be directed by the reporter and the supreme court of appeals. The reporter shall secure the copyright of each pamphlet of opinions so published in advance. Each pamphlet shall contain the report of such number of cases as the supreme court of appeals and the reporter shall deem advisable.

The contract for the publication of such advance sheets shall be made in the manner provided for the publication of bound volumes of the “West Virginia Reports.”

A charge of not less than the actual cost of printing and distribution shall be made for such advance sheets.

CHAPTER 36
(H.B. 1025—By Mr. Steptoe)

[Passed February 5, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to supervisory rules for magistrate courts prepared by judges of the circuit courts; rules promulgated by the supreme court of appeals.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.


1 The supreme court of appeals is hereby authorized to promulgate rules to carry out the intent of this chapter and to exercise rule-making authority granted by Article VIII of the constitution of West Virginia. Rules promulgated by the judge of a circuit court, or the chief judge thereof, pursuant to the provisions of this chapter shall be subordinate and subject to the rules of the supreme court of appeals or the orders of the chief justice thereof. Rules promulgated by the judge of a circuit court, or the chief judge thereof, shall be made by order entered upon the order book of the circuit court, as hereinafter provided, and shall be effective when filed with the clerk of the supreme court of appeals and the magistrate court clerk for the magistrate court in which such rules apply. All rules promulgated under this section by the supreme court of appeals, or by the judge of a circuit court, or the chief judge thereof, shall be entered upon an order book designated for the purpose of magistrate court rules by the clerk of the circuit court.

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CHAPTER 37

(H. B. 1404—By Mr. Martin, 35th Dist.)

[Passed March 9, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to magistrate courts; costs, fines and records; providing that the costs be assessed against the losing party.

Be it enacted by the Legislature of West Virginia:

That article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a, to read as follows:
ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1a. Costs assessed against losing party.

1 Except as otherwise provided by law, costs shall be assessed
2 against the losing party or parties.

CHAPTER 38
(Com. Sub. for H. B. 1218—By Mr. Albright)

[Passed February 22, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter fifty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section fifteen,
relating to allowing magistrates to compel attendance of a
defendant at a criminal trial or other criminal hearing by
issuance of a capias.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-15. Failure of defendant to appear at criminal trial or other
criminal hearing; compulsion of appearance.

1 Whenever any defendant, properly notified, fails to appear
2 for a criminal trial or other criminal hearing before a magis-
3 trate, the magistrate may issue a capias to compel that person
4 to appear.

CHAPTER 39
(Com. Sub. for H. B. 1220—By Mr. Albright)

[Passed February 25, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter
fifty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to requiring post judgment
process, in a case before a magistrate in which a suggestion of salary and wages is instituted and such suggestion is more appropriately conducted in another county, to be delivered to the sheriff of that county with return to the issuing clerk.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

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

(b) A magistrate court clerk, deputy clerk or magistrate assistant before whom a suggestion of salary and wages is instituted pursuant to the provisions of articles five-a and five-b, chapter thirty-eight of this code shall forward all post judgment process directly to the sheriff of any county in the same manner and with the same authority as has been given to circuit clerks, pursuant to section five, article three, chapter fifty-six.

CHAPTER 40

(H. B. 1373—By Mr. Harman, 32nd Dist.)

[Passed February 15, 1982; in effect July 1, 1982. Approved by the Governor.]
circuit judges; and changing the terms of the twenty-first cir-
cuit, for the county of Grant.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1u. Twenty-first circuit.

1 For the county of Grant, on the first Tuesday in March,
2 the second Tuesday in July and the first Tuesday in November.

3 For the county of Mineral, on the second Tuesday in
4 January, the first Tuesday in May and the first Tuesday in
5 September.

6 For the county of Tucker, on the second Tuesday in
7 February, the first Tuesday in June and the first Tuesday in
8 October.

CHAPTER 41
(Com. Sub. for S. B. 221—By Mr. Galperin)

{Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.}

AN ACT to amend article one, chapter sixty-two of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
five-a, relating to preliminary procedure; providing that a
law-enforcement officer may issue a citation instead of making
an arrest for any misdemeanor, not involving injury to the
person, committed in the law-enforcement officer's presence;
providing that an arrest may be made upon the belief that the
person is likely to harm himself or others, and when a person is
being detained for shoplifting pursuant to law; time for
appearance to be stated on citation; and providing for arrest for
failure to appear in response to citation.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-5a. Citation in lieu of arrest; failure to appear.

1. A law-enforcement officer may issue a citation instead of making an arrest for the following offenses, if there are reasonable grounds to believe that the person being cited will appear to answer the charge:

   (1) Any misdemeanor, not involving injury to the person, committed in a law-enforcement officer's presence: Provided, That the officer may arrest the person if he has reasonable grounds to believe that the person is likely to cause serious harm to himself or others; and

   (2) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting, pursuant to section four, article three-a, chapter sixty-one of this code.

The citation shall provide that the defendant shall appear within a designated time.

If the defendant fails to appear in response to the citation or if there are reasonable grounds to believe that he will not appear, a complaint may be made and a warrant shall issue.

When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "arrested" in lieu of the date of court appearance.

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CHAPTER 42

(Com. Sub. for H. B. 1015—By Mr. Brenda and Mr. Harman, 33rd Dist.)

(Passed February 4, 1982; in effect ninety days from passage. Approved by the Governor.)

AN ACT to repeal section three, article four, chapter forty-two of the code of West Virginia, one thousand nine hundred
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§42-6-1. Title.

§42-6-2. Right to disclaim interest in property.

§42-6-3. Time of disclaimer; delivery.

§42-6-4. Form of disclaimer.

§42-6-5. Effect of disclaimer.

§42-6-6. Waiver and bar.

§42-6-7. Remedy not exclusive.

§42-6-8. Application.

§42-6-1. Title.

1 This article may be cited as the “Uniform Disclaimer of Property Interests Act.”

§42-6-2. Right to disclaim interest in property.

1 A person, or the representative of a deceased, incapacitated or protected person, to whom any property or interest therein devolves, by whatever means, may disclaim it in whole or in part by delivering a written disclaimer under this article. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

§42-6-3. Time of disclaimer; delivery.

1 (a) Except as provided in subsection (c) of this section if the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer shall be delivered, as to a present interest,
later than six months after the death of the deceased owner or
deceased donee of a power of appointment and, as to a future
interest, not later than six months after the event determining
that the taker of the property or interest has become finally
ascertained and his interest is indefeasibly vested. The dis-
claimer shall be delivered in person or mailed by registered or
certified mail to any personal representative, or other fidu-
 ciary, of the decedent or the donee of the power, to the holder
of the legal title to which the interest relates or to the person
entitled to the property or interest in the event of disclaim e r. A
fully executed and acknowledged copy of the disclaimer shall
be filed and recorded with the probate documents in the office
of the clerk of the county commission of the county in which
proceedings for the administration of the estate of the deceased
owner or deceased donee of the power have been commenced.

(b) Except as provided in subsection (c), if the property or
interest has devolved to the disclaimant under a nontesta-
mentary instrument or contract, the disclaimer shall be deliver-
ed as to a present interest, not later than six months after the
effective date of the nontestamentary instrument or contract
and, as to a future interest, not later than six months after the
event determining that the taker of the property or interest
has become finally ascertained and his interest indefeasibly
vested. If the person entitled to disclaim does not have actual
knowledge of the existence of the interest, the disclaimer shall
be delivered not later than six months after he has actual
knowledge of the existence of the interest. The effective date of
a revocable instrument or contract is the date on which the
maker no longer has power to revoke it or to transfer to him-
self or another the entire legal and equitable ownership of the
interest. The disclaimer shall be delivered in person or mailed
by registered or certified mail to the person who has legal title
to or possession of the interest disclaimed.

(c) In any case, as to a transfer creating an interest in the
disclaimant made after the thirty-first day of December, one
thousand nine hundred seventy-six, and subject to tax under
chapters eleven, twelve or thirteen of the Internal Revenue
Code of 1954, as amended, a disclaimer intended as a qualified
disclaimer thereunder must specifically so state and must be
delivered not later than nine months after the later of the date the transfer is made or the day on which the person disclaiming attains age twenty-one.

(d) A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him, if the joint tenancy was created by act of a deceased joint tenant and the survivor did not join in creating the joint tenancy.

(e) If real property or an interest therein is disclaimed, in addition to recording the disclaimer in the county wherein administration is had or commenced, a fully executed and acknowledged copy of the disclaimer shall be recorded in the deed books in the office of the clerk of the county commission of the county in which the property or interest disclaimed is located.

§42-6-4. Form of disclaimer.

The disclaimer shall (a) describe the property or interest disclaimed, (b) declare the disclaimer and extent thereof, (c) be signed by the disclaimant and (d) be acknowledged in such a manner as would authorize a deed to be admitted to record.

§42-6-5. Effect of disclaimer.

(a) If the property or interest devolved to a disclaimant under a testamentary instrument or under the laws of intestacy and the deceased owner or donee of a power of appointment has not provided for another disposition, it devolves as if the disclaimant had predeceased the decedent or, if the disclaimant was designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and his interest is indefeasibly
vested. A disclaimer relates back for all purposes to the date of death of the decedent, or of the donee of the power, or the determinative event, as the case may be.

(b) If the property or interest devolved to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition, (1) it devolves as if the disclaimant had died before the effective date of the instrument or contract; and (2) a future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and his interest indefeasibly vested. A disclaimant relates back for all purposes to the effective date of the instrument or contract or the date of the determinative event, as the case may be.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under him.

§42-6-6. Waiver and bar.

The right to disclaim property or an interest therein is barred by (a) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, (b) a written waiver of the right to disclaim, (c) an acceptance of the property or interest or a benefit thereunder or (d) a sale of the property or interest under judicial sale made before the disclaimer is effected.

§42-6-7. Remedy not exclusive.

This article does not abridge the right of person to waive, release, disclaim or renounce property or an interest therein under any other statute.

§42-6-8. Application.

An interest in property that exists on the effective date of this article as to which, if a present interest, the time for delivering a disclaimer under this article has not expired or, if a future interest, the interest has not become indefeasibly
vested or the taker finally ascertained, may be disclaimed within six months after the effective date of this article.

CHAPTER 43
(Com. Sub. for H. B. 1687—By Mr. Givens and Mr. Harman, 33rd Dist.)
[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for the prosecution of persons violating the provisions of ordinances adopted for the control and registration of dogs; allowing county commissions to provide that any such violation is a misdemeanor; providing that magistrate courts and circuit courts have concurrent jurisdiction with respect to such misdemeanors; and providing for penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS.
§19-20-6. County dog warden; rules and regulations for dog control; prosecution and penalties for violation of ordinances.

(a) The county commission of each county may appoint and employ a county dog warden, and such number of deputies, for such time, and at such compensation, as such county commission shall deem reasonable and necessary to enforce the provisions of this code with respect to the control and registration of dogs, the impounding, care and destruction of unlicensed dogs. Such county dog warden may be appointed a deputy assessor for the purpose of collecting the dog tax and registration fees, taking the dog registration and providing the tags authorized by this article. The county dog warden or any
deputies may, in the discretion of the county commission, be
regularly employed officers or agents of any humane society
or society for the prevention of cruelty to animals, organized
and operating under the laws of this state and owning, controll-
ing and operating a suitable place within the county for im-
pounding and destroying dogs. In addition to the compensa-
tion provided for above, a bounty of fifty cents per dog shall
be paid to the county dog warden or deputy who captures an
unregistered dog. Such county dog warden and deputy wardens
shall each give bond in a sum of not less than one thousand
dollars and not more than two thousand dollars conditioned on
the faithful performance of their duties. Such bonds shall be
filed with the county commission by which such persons are
appointed.

The county dog warden and his deputies shall patrol the
county in which they are appointed and shall seize on sight
and impound any dog more than six months of age found not
wearing a valid registration tag, except dogs kept constantly
confined in a registered dog kennel. They shall be responsible
for the proper care and final disposition of all impounded dogs.
The county dog warden shall make a monthly report, in writ-
ing, to the county commission of his county. When any dog
shall have been seized and impounded, the county dog warden
shall forthwith give notice to the owner of such dog, if such
owner be known to the warden, that such dog has been im-
pounded and that it will be sold or destroyed if not redeemed
within five days. If the owner of such dog be not known to
the dog warden, he shall post a notice in the county courthouse.
The notice shall describe the dog and the place where seized
and shall advise the unknown owner that such dog will be sold
or destroyed if not redeemed within five days.

(b) Any county commission may promulgate and enforce
such ordinances, rules and regulations, not inconsistent with
the provisions of this article, as it considers necessary or con-
venient for the control and management of all dogs in the
county, or any portion thereof, regardless of the age of any
such dog: Provided, That the county commissions may prom-
ulgate and enforce such ordinances, rules and regulations to
the extent necessary for the implementation of the provisions contained in this article.

(c) The county commission of each county may provide in such ordinance for the arrest, conviction and punishment of any person who violates the provisions thereof. The county commission of each county may provide in any such ordinance that any person who violates the provisions of the ordinance is guilty of a misdemeanor, and, upon conviction thereof, that such person is subject to a fine or fines. The amount of such fine for a single violation of any such ordinance may not exceed one hundred dollars. Magistrate courts and circuit courts shall have concurrent jurisdiction with respect to such misdemeanors.

CHAPTER 44
(S. B. 258—By Mr. Heck and Mr. Tonkovich)
[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nineteen, chapter five 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 four, relating to domestic aluminum, glass and steel in public works projects.

Be it enacted by the Legislature of West Virginia:

That section two, article nineteen, chapter five 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 four, all to read as follows:

ARTICLE 19. DOMESTIC ALUMINUM, GLASS AND STEEL IN PUBLIC WORKS PROJECTS.

§5-19-2. Preference for domestic aluminum, glass and steel products; mandatory contract provision; exceptions.

§5-19-4. Bid or offered price of steel products of foreign origin.
§5-19-2. Preference for domestic aluminum, glass and steel products; mandatory contract provision; exceptions.

(a) Every state spending unit, as defined in chapter five-a, shall require that every contract and subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works contain a provision that, if any aluminum, glass or steel products are to be supplied in the performance of the contract, or subcontract, only domestic aluminum, glass or steel products shall be supplied unless the spending officer, as defined in chapter five-a, determines, in writing, after the receipt of offers or bids, that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest or that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements: Provided, That this article applies to any public works contract awarded in an amount more than fifty thousand dollars, and with regard to steel only, this article applies to any public works contract awarded in an amount more than fifty thousand dollars or requiring more than ten thousand pounds of steel products.

(b) The commissioner of finance and administration shall issue rules which provide that, for purposes of this article, the bid or offered price of any aluminum, glass or steel products of domestic origin, as defined in section one of this article (including any applicable duty), is not unreasonable if it does not exceed the sum of a differential of twenty percent of the bid or offered price of the aluminum, glass or steel products of foreign origin: Provided, That if such products are produced in a "substantial labor surplus area" as defined by the United States department of labor, the differential applied under this article shall be thirty percent.

§5-19-4. Bid or offered price of steel products of foreign origin.

If prior to the award of a contract under this article, the spending officer, as defined in chapter five-a, determines that there exists a bid or offered price of like aluminum, glass or steel products of foreign origin that is reasonable and lower than the lowest bid or offered price of aluminum, glass or steel products of domestic origin, the spending officer, as defined in chapter five-a, may request in writing a
reevaluation and reduction in the lowest bid offered price of such products of domestic origin.

CHAPTER 45
(S. B. 222—By Mr. Palumbo)

[Passed March 9, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one and eight, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to enact in lieu thereof a new section one, article one, chapter forty-eight, all relating to the age of consent to marry for males and females; procedure for giving consent by parent or legal guardian; and allowing a judge of the circuit court of the circuit in which the application is made for a marriage license to order issuance in certain cases.

Be it enacted by the Legislature of West Virginia:

That sections one and eight, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that a new section one, article one, chapter forty-eight be enacted in lieu thereof, all to read as follows:

ARTICLE 1. MARRIAGE.

§48-1-1. Age of consent for marriage; exception.

1 The age of consent for marriage for both the male and the female shall be eighteen years of age. Any person under the age of eighteen must obtain the consent of the parent or legal guardian in whose custody that person is at the time of application for a marriage license. That consent shall be given to the clerk of the county commission by a writing duly acknowledged before an officer authorized to acknowledge a deed. No person under the age of sixteen may be issued a license except upon order of the circuit judge and with the consent of the parent.
Provided, That a circuit judge of the circuit in which the application for a marriage license is filed may order the clerk to issue a license to any person under the age of sixteen if, in his discretion, the issuance of a license is in the best interest of the applicant and consent of the parent or guardian has been given in the manner required by this section.

CHAPTER 46
(Com. Sub. for S. B. 465—By Mr. Jones)

[Passed March 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to what relatives a man may not marry and what relatives a woman may not marry; providing exceptions thereto where relationships exist by virtue of adoption proceedings; and providing that the court may conduct an investigation into the natural parents of the adoptive person.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.
§48-1-2. What relatives a man may not marry.
§48-1-3. What relatives a woman may not marry.

§48-1-2. What relatives a man may not marry.

No man shall marry his mother, grandmother, sister, daughter, granddaughter, half sister, aunt, brother's daughter, sister's daughter, first cousin or double cousin: Provided, That for the purpose of this section cousin or double cousin shall not include persons whose relationship is created solely by adoption: Provided, however, That if it be necessary to open and examine the record of any adoption proceeding in the state to ascertain that a relationship of cousin or double cousin is created solely by adoption, then an
application may be made to the circuit court wherein such proceeding was had, by the clerk of the county commission seeking to issue the marriage license, or either party applying for such license, to open such record and cause examination thereof. Upon such application, the judge shall examine the record confidentially and report to the clerk whether the record discloses any consanguinity prohibited by this section and may grant such other relief prayed for which may be proper under section four, article four of this chapter.

§48-1-3. What relatives a woman may not marry.

No woman shall marry her father, grandfather, brother, son, grandson, half brother, uncle, brother's son, sister's son, first cousin or double cousin: Provided, That for the purpose of this section cousin or double cousin shall not include persons whose relationship is created solely by adoption: Provided, however, That if it be necessary to open and examine the record of any adoption proceeding in the state to ascertain that a relationship of cousin or double cousin is created solely by adoption, then an application may be made to the circuit court wherein such proceeding was had, by the clerk of the county commission seeking to issue the marriage license, or either party applying for such license, to open such record and cause examination thereof. Upon such application, the judge shall examine the record confidentially and report to the clerk whether the record discloses any consanguinity prohibited by this section and may grant such other relief prayed for which may be proper under section four, article four of this chapter.
marketed or designed for use as drug paraphernalia; records to be kept by licensee, contents; promulgation of regulations by state tax commissioner; sale to minors prohibited; and criminal penalties.

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 nineteen, to read as follows:

ARTICLE 19. DRUG PARAPHERNALIA.

§47-19-1. Items designed or marketed for use with controlled substances; license required.

It shall be unlawful for any person or persons as principal, clerk, agent or servant to sell any items, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances, as defined in chapter sixty-a of this code, without obtaining a license therefor from the state tax commissioner. Such licenses shall be in addition to any or all other licenses held by applicant. The fee for such license shall be one hundred fifty dollars.


Application to sell any item, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances shall be accompanied by affidavits by applicant and each and every employee authorized to sell such items that such person has never been convicted of a drug-related offense.


(a) The following items, if marketed for use or designed for use with controlled substances, are considered drug paraphernalia for the purpose stated in section one of this article:
(1) Kits marketed for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits marketed for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) Isomerization devices marketed for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment marketed for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters marketed for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers marketed for use, or designed for use in packaging small quantities of controlled substances;

(10) Hypodermic syringes, needles and other objects marketed for use, or designed for use in parenterally injecting controlled substances into the human body;

(11) Paper of colorful design, with names oriented for use with controlled dangerous substances and displayed: Provided, That white paper or tobacco oriented paper not necessarily designed for use with controlled substances is not covered;

(12) Pipes displayed in the proximity of roach clips, or literature encouraging illegal use of controlled substances, are covered by this article: Provided, That pipes otherwise displayed are not covered by this article;

(13) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
(14) Miniature cocaine spoons, and cocaine vials; or
(15) Chillums or bongs.

(b) In determining whether an object is marketed for use or designed for use as drug paraphernalia, the state tax commissioner or other authority should consider the following:

(1) The proximity of the object, in time and space, to a controlled substance;
(2) The existence of any residue of controlled substances on the object;
(3) Instructions, oral or written, provided with the object concerning its use;
(4) Descriptive materials accompanying the object which explain or depict its use;
(5) National and local advertising concerning its use;
(6) The manner in which the object is displayed for sale;
(7) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
(8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
(9) The existence and scope of legitimate uses for the object in the community.

1 Every licensee must keep a record of every item, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances which is sold, and this record shall be open to the inspection of any police officer at any time during the hours of business. Such record shall contain the name and address of the purchaser, the name and quantity of the product, the date and time of the sale, and the licensee or agent of the licensee's signature. Such records shall be retained for not less than two years.

§47-19-5. Regulations.
1 The applicant shall comply with all applicable rules of the state tax commissioner, promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

§47-19-6. Sale to minors prohibited; penalty.
1 It shall be unlawful to sell items as described in section
three of this article in any form to any male or female child under eighteen years of age. Any person eighteen years of age or older who violates this section is guilty of a felony, and, upon conviction thereof, may be imprisoned in the penitentiary for not less than one nor more than five years, or in the discretion of the court, be confined in the county jail not more than one year and shall be fined not more than fifteen thousand dollars, or both.

1 Any person violating any provision of this article shall, if convicted, be guilty of a misdemeanor and be fined not less than ten dollars nor more than five hundred dollars for the first offense and succeeding offenses, and each day that such violation shall continue shall be deemed a separate and distinct offense.

1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are hereby declared to be severable.

CHAPTER 48
(H. B. 2026—By Mr. Blackwell and Mr. Givens)

(Passed March 12, 1982; in effect July 1, 1982. 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, relating to county boards of education; deleting the requirement that the instructional term shall be confined to two hundred seventy-eight calendar days; providing that each county board may schedule a maximum of four days to be used by the employee outside the school environment.

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 to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; levies; ages of persons to whom schools are open.

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

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

Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days. Instructional and noninstructional activities may be scheduled during the same employment day. The instructional term shall commence no earlier than the first day of September and shall terminate no later than the eighth day of June.

Noninstructional days in the employment term may be used for making up canceled instructional days, curriculum development, preparation for opening and closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities. In addition, each board may designate and schedule for teachers and service personnel a maximum of four days to be used by the employee outside the school environment. However, no more than seven noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.

Notwithstanding any other provisions of the law to the contrary, if the board has canceled instructional days equal to the difference between the total instructional days scheduled and
one hundred seventy-eight, each succeeding instructional day canceled shall be rescheduled, utilizing only the remaining non-instructional days, except holidays, following such cancellation, which are available prior to the second day before the end of the employment term established by such county board.

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

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

The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in section five, article two and section eighteen, article five, chapter eighteen of this code: Provided, That persons over the age of twenty-one may enter only those programs or classes authorized by the state board of education and deemed appropriate by the county board of education conducting any such program or class: Provided, however, That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.
AN ACT to amend and reenact sections two and ten, article nine-a, chapter eighteen 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-a, relating to definitions and foundation allowance to improve instructional programs; providing that eighty percent of the increase in local share be allocated on the basis of basic resources per pupil commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-three; and providing for a transition allocation based on an average of basic resources per pupil and average expenditure per pupil, for the school year beginning on the first day of July, one thousand nine hundred eighty-two only.

Be it enacted by the Legislature of West Virginia:

That sections two and ten, article nine-a, chapter eighteen 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-a, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.
§18-9A-10a. Distribution of foundation allowance to improve instructional programs; transition to basic resources per pupil allocation.


1 For the purpose of this article:

2 "State board" means the West Virginia board of education.

3 "County board" or "board" means a county board of education.

4 "Professional salaries" means the state legally mandated sal-
aries of the professional educators as provided in article four, chapter eighteen-a of this code.

"Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code.

"Professional instructional personnel" means a professional educator whose regular duty is as that of a classroom teacher, librarian or counselor. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he is assigned and serves on a regular full-time basis in appropriate instruction, library or counseling duties.

"Service personnel salaries" shall mean the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of the code.

"Service personnel" shall mean all personnel as provided for in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to adjusted enrollment, a service employee shall be counted as that number found by dividing his number of employment days in a fiscal year by two hundred: Provided, however, That the computation for any such person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code, shall be calculated as one half an employment day.

"Net enrollment" means the number of pupils enrolled in special education programs, early childhood programs and grades one to twelve, inclusive, of the public schools of the county.

"Adjusted enrollment" means the net enrollment plus twice the number of pupils enrolled for special education, all adjusted to the equivalent of the instructional term and in accordance with such eligibility requirements and regulations as established by the state board, but no pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no
pupil shall be counted who attends school in this state from
another state.

“Levies for general current expense purposes” means on
each hundred dollars of valuation, twenty-two and five-tenths
cents on Class I property, forty-five cents on Class II property,
and ninety cents on Classes III and IV property.

“Average expenditure per pupil” for the state and the
several counties means the total of (a) expenditures from,
(b) transfers from and (c) current year outstanding obligations
of a county’s current expense fund budget; plus (d) current
year’s property tax revenues collected for the permanent im-
provement fund; minus (a) any expenditure, transfer or cur-
rent year’s outstanding obligation of federal funds and (b)
revenues from increased levies approved by voters as provided
in section ten, article X of the constitution of West Virginia
in the current expense fund which net expenditure found is
divided by the number of students in adjusted enrollment.
The data used for such computation shall be that of the
second preceding school year.

“Basic resources per pupil” for the state and the several
counties means the total of (a) property tax revenues com-
puted at the maximum regular levy rates as provided by
section six-c, article eight, chapter eleven of this code, at a
uniform rate of ninety-five percent, but excluding revenues
from increased levies as provided in section ten, article X
of the constitution of West Virginia, and (b) basic state
aid as provided in sections twelve and thirteen of this article,
but excluding the foundation allowance to improve instruc-
tional programs as provided in section ten of this article,
this total divided by the number of students in adjusted en-
rollment: Provided, That any year’s allocations to the coun-
ties of the eighty percent portion of the foundation allowance
to improve instructional programs, as provided in section
ten of this article, shall be determined on the basis of the
immediately preceding school year’s basic resources per pupil.

§18-9A-10. Foundation allowance to improve instructional pro-
grams.

1 Commencing with the school year beginning on the first
day of July, one thousand nine hundred eighty-three, and
thereafter, funds which accrue from allocations due to in-
crease in total local share above that computed for the school
year beginning on the first day of July, one thousand nine
hundred eighty-one, from balances in the general school fund,
or from appropriations for such purpose shall be allocated to
increase state support of counties as follows:

Twenty percent of the accrued funds shall be allocated
to the counties proportional to adjusted enrollment and eighty
percent of the accrued funds shall be allocated according
to the following plan for progress toward and to basic re-

sources per pupil equity.

Beginning with the county which has the lowest basic
resources per pupil and progressing through the counties
successively to and beyond the county with the highest basic re-

sources per pupil, the funds available shall be allocated in
amounts necessary to increase moneys available to the county
or counties to the basic resources per pupil level, as nearly as is
possible, of the county having the next higher basic resources
per pupil: Provided, That to be eligible for its allocation under
this section, a county board shall lay the maximum regular tax
rates set out in section six-c, article eight, chapter eleven of this
code: Provided, however, That moneys allocated by provision
of this section shall be used to improve instructional programs
according to a plan for instructional improvement which the af-
fected county board shall file with the state board by the first
day of August of each year, to be approved by the state board
by the first day of September of that year if such plan sub-
stantially complies with standards to be adopted by the
state board: Provided further, That no part of this allocation
may be used to employ professional educators in counties
until and unless all applicable provisions of sections four
and fourteen of this article have been fully utilized. Such
instructional improvement plan shall be made available for
distribution to the public at the office of each affected county
board.

For the school year beginning on the first day of July,
one thousand nine hundred eighty-two only, allocations of
the accrued funds shall be made in accordance with section ten-
a of this article.

§18-9A-10a. Distribution of foundation allowance to improve in-
structional programs; transition to basic resources per pupil allocation.

For the school year beginning on the first day of July, one
thousand nine hundred eighty-two only, distribution of
funds which have accrued from increases in total local share
since the first day of July, one thousand nine hundred eighty-
one, shall be allocated according to the following plan:

The state board shall determine (a) the amount that each
county would receive based on adjusted enrollment and
basic resources per pupil as defined in section two and
provided for in section ten of this article, and (b) the amount
each county would receive based on adjusted enrollment of
the second preceding year as to the twenty percent allocation
and average expenditure per pupil as to the eighty percent
allocation, computed in the following manner:

Beginning with the county which has the lowest average
expenditure per pupil and progressing through the counties
successively to and beyond the county with the highest aver-
age expenditure per pupil, the funds available shall be allo-
cated in amounts necessary to increase moneys available to
the county or counties to the expenditure per pupil level,
as nearly as is possible, of the county having the next higher
expenditure per pupil.

For progress toward and to basic expenditure and resource
per pupil equity, each county shall receive an amount equal
to one half the total of (a) the total moneys to be allocated
to a county based on adjusted enrollment and basic resources
per pupil pursuant to section ten of this article and (b) the
total moneys to be allocated to the same county based on
adjusted enrollment and average expenditure per pupil as
computed pursuant to this section: Provided, That to be
eligible for its allocation under this section, a county board
shall lay the maximum regular tax rates set out in section
six-c, article eight, chapter eleven of this code: Provided,
however, That moneys allocated by provision of this section
shall be used to improve instructional programs according to a plan for instructional improvement which the affected county boards shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided further, That no part of this allocation may be used to employ professional educators in counties until and unless all applicable provisions of sections four and fourteen of this article have been fully utilized. Such instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

CHAPTER 50
(5. B. 46—By Mr. Galperin)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the allocation of state public school support based on an increase in a county’s net enrollment; and correcting a clerical error by deleting the word “fund”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

1 To provide for the support of increased net enrollments in the counties in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the general revenue fund an amount equal to the average total state aid per net pupil multiplied by the total of all
of the increases in the net enrollments of the counties made by comparing the most recent reports of net enrollment for the second school month to the immediately previous year's reports for the same school month.

Upon determination of the several increases in the respective counties' net enrollments, as of the close of the second school month, each county showing such increase shall be allocated an amount equal to that county's average per net pupil total state aid multiplied by the increase in that county's net enrollment determined as provided heretofore. Such allocations shall be distributed not later than December thirty-one of each year to the counties having increases in net enrollment as heretofore provided. If the amount appropriated for this purpose shall not be sufficient to provide payment in full for the total of these several allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the several allocations, and the allocations as thus adjusted shall be distributed to the counties as provided in this section.

No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

CHAPTER 51
(S. B. 148—By Mr. Ash)

[Passed March 12, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend article ten-c, chapter eighteen 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 continuing West Virginia's membership in the southern regional education compact.

Be it enacted by the Legislature of West Virginia:

That article ten-c, 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 three, to read as follows:

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§18-10C-3. Membership in compact continued; findings.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the compact. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred eighty-eight.

CHAPTER 52
(H. B. 2025—By Mrs. Martin)

[Passed March 12, 1982: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and thirteen-a, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia board of regents; defining higher education institution to include private proprietary educational institutions within the state operated for profit; and providing that rights granted previous to the adoption of section thirteen-a shall not be infringed.

Be it enacted by the Legislature of West Virginia:

That sections two and thirteen-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.

§18-26-2. Definitions.

§18-26-13a. Accreditation of institutions of higher education; standards for degrees.

§18-26-2. Definitions.

Notwithstanding the provisions of section one, article one of this chapter, the following words when used in this article shall have the meaning hereafter ascribed to them unless the context clearly indicates a different meaning:

(a) The term "board" shall mean the West Virginia board of regents.

(b) The term "state colleges" shall mean Bluefield State College, Concord College, Fairmont State College, Glenville State College, Shepherd College, West Liberty State College, West Virginia Institute of Technology, West Virginia State College, West Virginia School of Osteopathic Medicine and any state community college or other state institution of higher education which may hereafter be established and not designated as a "university."

(c) The term "state college" shall mean one of the state colleges.

(d) The terms "state universities" and "universities" shall mean Marshall University and West Virginia University and any other state institution of higher education which may hereafter be established and designated as a "university."

(e) The terms "state university" and "university" shall mean one of the state universities.

(f) The term "community college" shall mean any institution of higher education which has been designated as a community college by the West Virginia board of regents under the provisions of section thirteen-b, article twenty-six, chapter eighteen of this code.

(g) The term "higher educational institution" shall mean any institution as defined by sections 401(f), (g), (h) of the Federal Higher Education Facilities Act of 1963, as amended, and shall also mean any private proprietary educational inst-
§18-26-13a. Accreditation of institutions of higher education; standards for degrees.

The West Virginia board of regents shall make rules and regulations for the accreditation of all colleges, universities and other institutions of higher education in the state, and shall determine the minimum standards for the conferring of degrees. No institution of higher educational status may confer any degree on any basis of work or merit below the minimum standards prescribed by the West Virginia board of regents. Nothing contained herein shall infringe upon the rights, including rights to award degrees, granted to any institution by charter given according to law, or by actions of the West Virginia board of regents, previous to the adoption of this section.

No charter or other instrument containing the right to confer degrees of higher educational status shall be granted by the state of West Virginia to any institution, association or organization within the state, nor shall any such degree be awarded until the condition of conferring such degree has first been approved in writing by the West Virginia board of regents.

CHAPTER 53
(Com. Sub. for H. B. 1887—By Mr. Albright and Mr. Tompkins)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven, relating to the West Virginia education loan bond; short title; declaration of purpose; definitions; functions and powers of board of regents; expenses of board; acquisition of assets; conveyance of loan funding deposit; issuance of bonds; trust agreement
to secure bonds; credit of state not pledged; collection of revenues; application of funds from sale of bonds; rights of bondholders; refunding of bonds; investment of board funds; bonds as legal investments; annual report of board; competitive bidding waived; powers of board unrestricted; article to be construed liberally; and exemption from taxation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. WEST VIRGINIA EDUCATION LOAN BOND PROGRAM.

§18-27-4. Powers of board; determination of qualified financing and establishment of financing programs; establishing criteria for and guidelines encompassing the types of and qualifications for education loan financing programs.
§18-27-5. Expenses; limitation of liability.
§18-27-6. Acquisition of certain moneys, endowments and properties and guarantees thereto.
§18-27-7. Conveyance of loan funding deposit after payment of principal and interest.
§18-27-12. Funds from sale of bonds as trust funds; application of funds.
§18-27-14. Refunding bonds; purpose; proceeds; investment of proceeds.
§18-27-17. Account of activities; receipts and expenditures; annual report; audit.
§18-27-20. Article as alternative method; application of bond law; powers not subject to supervision or regulation by other element or government.
§18-27-22. Exercise of powers as essential public function; exemption from taxation.

This article may be referred to and cited as the "West Virginia Independent Higher Education Loan Bond Program."


It is declared that for the benefit of the people of the state of West Virginia, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills; that to achieve these ends it is of the utmost importance that the students attending institutions of higher education located in West Virginia have reasonable alternative to enhance their financial access to such institutions; that reasonable financial access to institutions of higher education will assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills; that it is the purpose of this article to provide a measure of assistance and an alternative method to enable students and the families of students attending institutions of higher education located in West Virginia to appropriately and prudently finance the cost or a portion of the cost of such higher education; and that it is the intent of this article to supplement federal guaranteed higher education loan programs, other student loan programs and grant or scholarship programs to provide the needed additional options for the financing of a student's higher education in execution of the public policy set forth above.


The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "Board" means the West Virginia board of regents.

(b) "Bonds" means revenue bonds, notes or other evidences of indebtedness of the board issued under this article.

(c) "Bond resolution" means the resolution or resolutions
of the board and the trust agreement, if any, authorizing
the issuance of and providing for the terms and conditions
applicable to bonds.

(d) "Borrower" means a student who has received an
education loan or any parent who has received or agreed to
pay an education loan.

(e) "Default insurance" means insurance insuring educa-
tion loans, authority loans or bonds against default.

(f) "Default reserve fund" means a fund established pur-
suant to a bond ordinance for the purpose of securing educa-
tion loans, authority loans or bonds.

(g) Cost of attendance is the amount defined by the
institution for the purpose of the guaranteed student loan
program as defined under Title IV, part B, of the "Higher
Education Act of 1965" as now or hereafter amended.

(h) "Education loan" means a loan which is made by an
institution of higher education to a student or parents of a
student, or both, in amounts not in excess of the maximum
amounts specified in this section, to finance the student's
attendance at the institution. The maximum loan amount may
not exceed:

(1) In the case of a borrower who is a student, the stu-
dent's cost of attendance for the period of time for which
the loan is made minus the following amounts applicable to
such period of time:

(i) The amount of grant which the student receives or
could receive under the federal Pell Grant program autho-
rized under Title IV, part A, of the "Higher Education Act
of 1965," as now or hereafter amended, whether or not the
student has made application for such grant;

(ii) The maximum net guaranteed student loan proceeds
which the student receives or could receive pursuant to Title
IV, part B, of the "Higher Education Act of 1965," as now
or hereafter amended, whether or not the student has made
application for such loan;

(iii) The amount of scholarships, grants or other nonre-
payable assistance received from government agencies, educational institutions or private institutions or organizations;

(2) (A) In the case of a borrower who is a parent of an eligible student, the student's cost of attendance minus:

(i) The amounts determined pursuant to subparagraphs (i), (ii) and (iii) of paragraph (1) of this subdivision; and

(ii) The amount of loan which the student receives pursuant to paragraph (1) of this subdivision.

(B) The combined maximum loan amount of both parents may not exceed the maximum amount as determined under paragraph (2) of this subdivision:

(i) "Loan funding deposit" means moneys, guarantees or other property deposited by an institution of higher education with the board or a trustee for the purpose of (1) providing security for bonds, (2) funding a default reserve fund, (3) acquiring default insurance or (4) defraying costs of the board, such moneys or properties to be in such amounts as deemed necessary by the board as a condition for such institution's participation in the board's programs.

(j) "Institution" means a not for profit educational institution which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district or municipality thereof, which is authorized by law to provide a program of education beyond the high school level and which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such certificate;

(2) Provides an educational program for which it awards a bachelor's degree or provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor's degree or its equivalent, for which it awards a postgraduate degree, or provides not less than a two-year program which is acceptable for full credit toward an associate degree, or offers not less than a two-year program in engineering, mathematics or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific or other technological fields which require the
understanding and application of basic engineering, scientific
or mathematical principles or knowledge;
(3) Is accredited by a nationally recognized accrediting
agency or association such as the north central association
of colleges and high schools;
(4) Does not discriminate in the admission of students on
the basis of race, color or creed;
(5) Has a governing board which possesses its own
sovereignty; and
(6) Has a governing board, or its delegated institutional
officials, which possess final authority in all matters of local
control, including educational policy, choice of personnel,
determination of program and financial management.
(k) "Parent" means any parent or guardian of a student
at an institution of higher education.

§18-27-4. Powers of board; determination of qualified financings
and establishment of financing programs; establishing
criteria for and guidelines encompassing the types of
and qualifications for education loan financing pro-
grams.

The board may:

(a) Issue bonds for the purpose of making board loans to
institutions of higher education participating in a program of
the board for the express purpose of providing education
loans. The criteria and guidelines established by the board for
its education loan financing programs shall include such eligi-
bility standards for borrowers as the board determines are
necessary or desirable in order to effectuate the purposes of
this article, including the following: (i) Each student shall have
a certificate of admission or enrollment at a specific participat-
ing institution of higher education, (ii) each student or his
or her parents shall satisfy such financial qualifications as the
board shall establish to effectuate the purposes of this article,
(iii) each student and his or her parents shall submit such in-
formation as may be required by the board to his or her
institution of higher education.

The board is authorized to contract with financial institu-
tions and other qualified loan origination and servicing organizations, which shall assist in prequalifying borrowers for education loans and which shall service and administer each education loan. Each education loan's fees shall include a portion, if necessary, to cover the applicable pro rata cost of such a servicing organization.

The board is authorized to establish specific criteria governing the eligibility of institutions of higher education to participate in its programs, the making of board and education loans and provisions for default.

(b) Receive and accept from any source, loans, contributions or grants for or in aid of a board education loan financing program or any portion thereof and, when required, to use such funds, property or labor only for the purposes for which it was loaned, contributed or granted.

(c) Make board loans to institutions of higher education and require that the proceeds thereof be used for making education loans and paying costs and fees in connection therewith.

(d) Charge to and apportion among participating institutions of higher education its administrative and operating costs and expenses incurred in the exercise of the powers and duties conferred by this article.

(e) Borrow working capital funds and other funds as may be necessary for start-up and continuing operations, as long as such funds are borrowed in the name of the board only. Such borrowings shall be limited obligations of the character described in section ten of this article and shall be payable solely from revenues of the board or the proceeds of bonds pledged for that purpose.

(f) Examine records and financial reports of participating institutions of higher education, and to examine records and financial reports of any contractor organization or institution retained under this section.

(g) Authorize its officers, agents and employees to take such action and do such things as are necessary or desirable in order to carry out and effectuate the purposes of this article.
(h) The board shall require that board loans be used solely to make education loans. The board shall require that institutions of higher education require that each borrower under an education loan use the proceeds solely for the cost of attendance and that each such borrower shall so certify.

§18-27-5. Expenses; limitation of liability.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and, except as authorized under subdivision (e) of section four, no liability may be incurred by the board beyond the extent to which moneys have been provided under this article.

§18-27-6. Acquisition of certain moneys, endowments and properties and guarantees thereto.

The board may establish specific guidelines relating to the deposits of certain moneys, guarantees, endowments or properties by institutions of higher education which would provide prudent security for education loans funding programs, authority loans, education loans or for bonds and establish guidelines relating to guarantees of or contracts to purchase education loans or bonds by such institutions or by financial institutions or others. A default reserve fund may be established for each series or issue of bonds. In this regard, the board may receive such moneys, endowments, properties and guarantees as it considers appropriate and, if necessary, to take title in the name of the board or in the name of a participating institution of higher education or a trustee. A guarantee for one hundred percent of principal and interest by the higher education assistance foundation or by a letter of credit from a financial institution chartered in West Virginia or a nationally chartered financial institution with stockholders reserve of at least twenty-five million dollars may constitute an alternate security option.

§18-27-7. Conveyance of loan funding deposit after payment of principal and interest.

When the principal of and interest on bonds of the board issued to finance the cost of an education loan financing program or programs, including any refunding bonds issued to
refund and refinance such bonds, have been fully paid and re-
tired or when adequate provision has been made to fully pay
and retire the same, and all other conditions of the bond reso-
lution authorizing the same have been satisfied and the lien
created by such bond resolution has been released in accor-
dance with the provisions thereof, the board shall promptly do
such things and execute such deeds and conveyances as are
necessary and required to convey any remaining moneys, prop-
erties and other assets comprising loan funding deposits to the
institutions of higher education which furnished the same in
proportion to the amounts furnished by the respective insti-
tutions of higher education.


(a) The board may from time to time issue bonds for any
purpose authorized under this article and all such bonds or
other obligations of the board issued pursuant to this article
shall be and are hereby declared to be negotiable for all pur-
poses notwithstanding their payment from limited source and
without regard to any other law or laws.

(b) The board may not have outstanding at any one time
bonds in an aggregate principal amount exceeding thirty mil-
lion dollars, excluding bonds issued to refund the bonds of the
board.

(c) The bonds of each issue shall be payable solely out of
revenues of the board pertaining to the program relating to
such bond issue, including principal and interest on board
loans and education loans, payments by institutions of higher
education, banks, insurance companies or others pursuant to
letters of credit or purchase agreements, investment earnings
from funds or accounts maintained pursuant to the bond reso-
lution, insurance proceeds, loan funding deposits, proceeds of
sales of education loans, proceeds of refunding bonds and fees,
charges and other revenues of the board from such program.

(d) The bonds may be issued as serial bonds or as term
bonds, or both. The bonds shall be authorized by a bond
resolution of the board and shall bear such date or dates, ma-
ture at such time or times not exceeding the year following the
last year in which the final payments in an education loan series portfolio are due, or thirty years, whichever is sooner, from their respective dates of issue, bear interest at such rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or fully registered, carry such registration and conversion privileges, be payable in lawful money of the United States of America at such places, and be subject to such terms of redemption as such bond resolution may provide. The bonds shall be executed by the manual or facsimile signatures of such officers of the board as are designated by the board. The bonds shall be sold in such manner and at such prices as the board determines. Pending preparation of the definitive bonds, the board may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(e) Any bond resolution may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to:

(i) Pledging or assigning the revenues derived from the authority loans and education loans with respect to which such bonds are to be issued; (ii) the fees and other amounts to be charged, and the sums to be raised in each year thereby, and the use, investment and disposition of such sums; (iii) the setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds, and the regulation, investment and disposition thereof; (iv) limitations on the use of the education loans; (v) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied; (vi) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, the terms upon which additional bonds may rank on a parity with, or be subordinate or superior to, other bonds; (vii) the refunding of outstanding bonds; (viii) the procedure, if any, by which the terms of any contract with bondholders may be amended, or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; (ix) defining the acts or omissions to act which shall constitute a default in
the duties of the board to holders of its obligations and providing the rights or remedies of such holders in the event of a default; (x) providing for guarantees, pledges of endowments, letters of credit, property or other security for the benefit of the holders of such bonds; and (xi) any other matters relating to the bonds which the board considers desirable.

(f) Neither the members of the board nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(g) The board may purchase its bonds out of any funds available therefor. The board may hold, pledge, cancel or resell such bonds subject to and in accordance with agreements with bondholders.

(h) The board may refund any of its bonds. Such refunding bonds shall be issued in the same manner as other bonds of the board.


In the discretion of the board any bonds issued under the provisions of this article may be secured by a trust agreement by and between the board and a corporate trustee or trustees, which may be any trust company or bank in the state of West Virginia having the powers of a trust company. The bond resolution providing for the issuance of bonds so secured shall pledge the revenues to be received by the board, including any or all of the revenues specified in subsection (c), section eight. This article may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have hereinabove been specifically authorized to be included in any bond resolution of the board, and may restrict the individual right of action by bondholders. In addition to the foregoing, any trust agreement may contain such other provisions as the board considers reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of the trust agree-
ment may be treated as a part of the cost of the operation of an education loan program.


Bonds issued under authority of this article shall be obligations of the board only, and not of the state of West Virginia. Bonds issued under authority of this article shall state upon the face of each bond that they represent and constitute a debt of the board, but not of the state of West Virginia within the meaning of the provisions of the constitution or statutes of the state of West Virginia; and they do not constitute a pledge of the full faith and credit of the board or of the state of West Virginia. The bonds may not grant to the owners or holders thereof any right to have the board or the Legislature levy any taxes or appropriate any funds for the payment of the principal thereof or interest thereon. Such bonds are payable, and shall state that they are payable, solely from the revenues pledged for their payment in accordance with the bond resolution.

Nothing in this article may be construed to authorize the board or any department, board, commission or other agency to create an obligation of the state of West Virginia within the meaning of the constitution or the code of West Virginia.


The board shall fix, revise, charge and collect fees and is empowered to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Each agreement entered into by the board with an institution of higher education shall provide that the fees and other amounts payable by the institution of higher education with respect to any program of the board shall be sufficient at all times, (a) to pay its share of the administrative costs and expenses of such program, (b) to pay the principal of, the premium, if any, and the interest on outstanding bonds of the board, issued in respect of such program to the extent that other revenues of the board pledged for the payment of the bonds are insufficient to pay the bonds as they become due and payable, (c) to
create and maintain reserves which may but need not be
required or provided for in the bond resolution relating
to such bonds of the board, and (d) to establish and maintain
whatever education loan servicing, control or audit procedures
are deemed to be necessary to the prudent operations of the
board. The board shall pledge the revenues from each pro-
gram, as described in subsection (c), section eight of this
article, as security for the issue of bonds relating to such
program. Such pledge shall be valid and binding from the
time when the pledge is made; the revenues so pledged by
the board shall immediately be subject to the lien of such
pledge without any physical delivery thereof or further act,
and the lien of any such pledge shall be valid and binding
against all parties having claims of any kind in tort, contract
or otherwise against the board or any participating institution
of higher education, irrespective of whether such parties have
notice thereof. Neither the bond resolution nor any financing
statement, continuation statement or other instrument by
which a pledge is created or by which the board’s interest
in revenues is assigned need be filed or recorded in any
public records in order to perfect the lien thereof as against
third parties except that a copy thereof shall be filed in the
records of the board and with the state treasurer.

§18-27-12. Funds from sale of bonds as trust funds; application of
funds.

All moneys received by or on behalf of the board pursuant
to the authority of this article, whether as proceeds from the
sale of bonds or as revenues, are trust funds to be held and
applied solely as provided in this article. Any officer with
whom, or any bank or trust company with which, such moneys
are deposited shall act as trustee of such moneys and shall hold
and apply the same for the purposes hereof, subject to such
regulations as this article and the bond resolution authorizing
the bonds of any issue may provide.


Any holder of bonds issued pursuant to this article or a
trustee under a trust agreement entered into pursuant to this
article, except to the extent that their rights are restricted by
any bond resolution, may, by any suitable form of legal pro-
ceedings, protect and enforce any rights under the laws of this
state or granted by the bond resolution. Such rights include the
right to compel the performance of all duties of the board re-
quired by this article or the bond resolution; to enjoin unlawful
activities; and in the event of default with respect to the pay-
ment of any principal of, premium, if any, and interest on any
bond or in the performance of any covenant or agreement on
the part of the board in the bond resolution, to apply to the
circuit court to appoint a receiver to administer and operate
the education loan program or programs, the revenues of which
are pledged to the payment of principal of, premium, if any,
and interest on such bonds, with full power to pay, and to
provide for payment of, principal of, premium, if any, and
interest on such bonds, and with such powers, subject to the
direction of the court, as are permitted by law and are ac-
corded receivers, excluding any power to pledge additional
revenues of the board to the payment of such principal, pre-
mium and interest.

§18-27-14. Refunding bonds; purpose; proceeds; investment of
proceeds.

(a) The board is authorized to provide for the issuance of
bonds of the board for the purpose of refunding any bonds of
the board then outstanding, including the payment of any
redemption premium thereon and any interest accrued or to
accrue to the earliest or any subsequent date of redemption,
purchase or maturity of such bonds.

(b) The proceeds of any such bonds issued for the purpose
of refunding outstanding bonds may, in the discretion of the
board, be applied to the purchase or retirement at maturity or
redemption of such outstanding bonds either on their earliest or
any subsequent redemption date or upon the purchase or at the
maturity thereof and may, pending such application, be placed
in escrow to be applied to such purchase or retirement at
maturity or redemption on such date as may be determined by
the board.

(c) Any such escrowed proceeds, pending such use, may be
invested and reinvested in direct obligations of the United
States of America, maturing at such time or times as are ap-
propriate to assure the prompt payment of the principal of
and interest and redemption premium, if any, on the outstanding
bonds to be so refunded. The interest, income and profits,
if any, earned or realized on any such investment may also
be applied to the payment of the outstanding bonds to be so
refunded. After the terms of the escrow have been fully satis-

cfied and carried out, any balance of such proceeds and inter-
est, income and profits, if any, earned or realized on the in-
vestments thereof shall be returned to the institution of higher
education for use by it in any lawful manner.

(d) All such refunding bonds are subject to this article in
the same manner and to the same extent as other revenue
bonds issued pursuant to this article.


Except as otherwise provided in subsection (c), section
fourteen of this article, the board may invest any funds in
(i) direct obligations of the United States of America, (ii) obli-
gations as to which the timely payment of principal and inter-
est is fully guaranteed by the United States of America, (iii)
obligations of the federal intermediate credit banks, federal
banks for cooperatives, federal land banks, federal home loan
banks, federal national mortgage association, government na-
tional mortgage association and the student loan marketing as-
sociation, (iv) certificates of deposit or time deposits consti-
tuting direct obligations of any bank: Provided, That invest-
ments may be made only in those certificates of deposit or
time deposits in banks which are insured by the federal de-
posit insurance corporation if then in existence, and (v) in
withdrawable capital accounts or deposits of state or federal
chartered savings and loan associations which are insured by
the federal savings and loan insurance corporation. Any such
securities may be purchased at the offering or market price
thereof at the time of such purchase. All such securities so
purchased shall mature or be redeemable on a date or dates
prior to the time when, in the judgment of the board, the funds
so invested will be required for expenditure. The express
judgment of the board as to the time when any funds will be
required for expenditure or be redeemable is final and conclusive.


All banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued pursuant to this article.

§18-27-17. Account of activities; receipts and expenditures; annual report; audit.

The board shall keep an accurate account of all its activities and of all its receipts and expenditures and shall annually in the month of January make a report thereof to its members, to the governor, the state treasurer, the clerk of the House of Delegates, the clerk of the Senate, and the commissioner of the department of finance and administration. Such report is a public record and open for inspection at the offices of the board during normal business hours. The report shall include: (a) Summaries of all applications by institutions of higher education for education loan financing assistance presented to the members of the board during such fiscal year; (b) summaries of all education loan programs which have received any form of financial assistance from the board during such year; (c) the nature and amount of all such assistance; (d) a report concerning the financial condition of the various education loan series portfolios; and (e) projected activities of the board for the next fiscal year, including projections of the total amount of financial assistance anticipated and the amount of revenue bonds or other evidences of indebtedness that will be necessary to provide the projected level of assistance during the next fiscal year. The auditor of the state of West Virginia may investigate the affairs of the board, may examine the properties and records of the board, and may prescribe methods of accounting and the rendering of periodical reports in relation to financings undertaken by the board.

Competitive bidding requirements of the code of West Virginia or any other similar requirements that may be lawfully waived are waived by this section and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts is not applicable to any action taken under authority of this article.


Notwithstanding any other provision of law, institutions may borrow money from the board, make education loans and take all other actions and do such things as are necessary or convenient to consummate the transactions contemplated under this article. It is lawful for the board to establish, charge, contract for and receive any amount or rate of interest or compensation with respect to board loans and for participating institutions to charge, contract for and receive any amount or rate of interest or compensation with respect to education loans.

§18-27-20. Article as alternative method; application of bond law; powers not subject to supervision or regulation by other element or government.

The foregoing sections of this article provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to, and the limitations imposed by this article do not limit or otherwise affect powers or rights conferred by other laws, and the issuance of bonds and refunding bonds under this article need not comply with the requirements of any other law applicable to the issuance of bonds. Except as otherwise expressly provided in this article, none of the powers granted to the board under this article shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or any department, division, commission, board, body, bureau, official or agency thereof or of the state.


This article being necessary for the welfare of the state
and its inhabitants, shall be liberally construed to effect its purpose.

§18-27-22. Exercise of powers as essential public function; exemption from taxation.

The exercise of the powers granted by this article will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a program by the board or its agent will constitute the performance of an essential public function, neither the board nor its agent shall be required to pay any taxes or assessments, including mortgage recording taxes, upon or in respect of a program, and moneys or any property acquired by, retained by or used by the board or its agents under the provisions of this article and the income therefrom shall at all times be free from taxation of every kind by the state and by the municipalities and other political subdivisions of the state.

CHAPTER 54
(5. B. 245—By Mr. Tonkovich)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, 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 three-a, relating to the payment of tuition fees for teachers for renewal of certification; limiting the amount of payment per teacher; and requiring the West Virginia department of education to promulgate rules pursuant to this section.

Be it enacted by the Legislature of West Virginia:

That article three, 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 three-a, to read as follows:
ARTICLE 3. TRAINING, CERTIFICATION, LICENSING.

§18A-3-3a. Payment of tuition, registration and other fees for teachers; maximum payment per teacher.

The West Virginia department of education shall establish in its annual budget a separate line item and shall pay from the appropriations therefor, to the extent that appropriations are provided, the tuition, registration and other fees of the teachers, as defined in section one, article one, chapter eighteen of this code, with continuing contracts who have completed any courses meeting the requirements of the department for renewal of certification as required in section three of this article in any college or university within the state. A teacher may enroll for such courses in a college or university outside the state and, upon receiving prior approval from the department, be reimbursed for tuition, registration and other fees upon completion thereof. However, payment for any single fee made by the department pursuant to the provisions of this section shall not exceed the amount of the highest corresponding fee charged at a West Virginia state-supported college or university: Provided, That the payment for tuition, registration or other fees under this section shall be limited to payment of such fees for up to a maximum of fifteen semester hours per teacher and shall be in accordance with rules and regulations promulgated by the department pursuant to this section.

CHAPTER 55

(H. B. 2034—By Mr. Barley and Mr. Prunty)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and eight-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rights of school service personnel; establishing Saturday and Sunday minimum pay; establishing class titles of auditor and mail clerk and corresponding pay grades; and requiring written consent
before reclassification or relegation of service employee’s condition of employment.

Be it enacted by the Legislature of West Virginia:

That sections eight and 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-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of these personnel for a longer term. The beginning and closing dates of the ten-month term shall not exceed forty-three weeks. Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement shall be applicable.

2 Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

3 No service employee, without his agreement, shall be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

4 Should an employee whose regular work week is scheduled from Monday through Friday agree to perform any work as-
Assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each such day he reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he shall be paid for at least a full day of work for each such day.

Custodians required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds.

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

An employee's contract as provided in sections four and five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel.

"Years of employment" means the number of years which an employee classified as service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States if the employee were employed at the time of his induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.
“Class title” means the name of the position or job held by service personnel.

“Accountant I” means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

“Accountant II” means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

“Accountant III” means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.

“Aide I” means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

“Aide II” means those personnel referred to in the “Aide I” classification who have completed a training program approved by the state board of education, or who hold a high school diploma or have received a general educational development certificate.

“Aide III” means those personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate, and have completed six semester hours of college credit at a higher educational institution.

“Audiovisual technician” means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

“Auditor” means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts.

“Bus operator” means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.
"Buyer" means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

"Cabinetmaker" means personnel employed to construct cabinets, tables, bookcases and other furniture.

"Cafeteria manager" means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

"Carpenter I" means personnel classified as a carpenter's helper.

"Carpenter II" means personnel classified as a journeyman carpenter.

"Chief mechanic" means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

"Clerk I" means personnel employed to perform clerical tasks.

"Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

"Computer operator" means qualified personnel employed to operate computers.

"Cook I" means personnel employed as a cook's helper.

"Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a "Cook I" for a period of four years, if such personnel have not been elevated to this classification within that period of time.
“Cook III” means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

“Crew leader” means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects.

“Custodian I” means personnel employed to keep buildings clean and free of refuse.

“Custodian II” means personnel employed as a watchman or groundsman.

“Custodian III” means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

“Custodian IV” means personnel employed as head custodians. In addition to providing services as defined in “Custodian III,” their duties may include supervising other custodian personnel.

“Director or coordinator of services” means personnel not defined as professional personnel or professional educators in section one, article one of this chapter, who are assigned to direct a department or division.

“Draftsman” means personnel employed to plan, design and produce detailed architectural/engineering drawings.

“Electrician I” means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

“Electrician II” means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

“Electronic technician I” means personnel employed at the apprentice level to repair and maintain electronic equipment.

“Electronic technician II” means personnel employed at the journeyman level to repair and maintain electronic equipment.
“Executive secretary” means personnel employed as the county school superintendent’s secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators as in section one, article one of this chapter, employed to manage and supervise a county school system’s food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

“Foreman” means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

“General maintenance” means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

“Glazier” means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

“Graphic artist” means personnel employed to prepare graphic illustrations.

“Groundsman” means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

“Handyman” means personnel employed to perform routine manual tasks in any operation of the county school system.

“ Heating and air conditioning mechanic I” means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

“ Heating and air conditioning mechanic II” means personnel employed at the journeyman level to install, repair and
maintain heating and air conditioning plants and related electrical equipment.

"Heavy equipment operator" means personnel employed to operate heavy equipment.

"Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

"Key punch operator" means qualified personnel employed to operate key punch machines or verifying machines.

"Locksmith" means personnel employed to repair and maintain locks and safes.

"Lubrication man" means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

"Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.

"Mail clerk" means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail.

"Maintenance clerk" means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

"Mason" means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

"Mechanic" means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

"Mechanic assistant" means personnel employed as a mechanic apprentice and helper.
“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation.

“Sanitation plant operator” means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.
"Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

"Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

"Secretary III" means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of "secretary II" herein for twelve continuous years.

"Supervisor of maintenance" means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. His responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures, mechanical and electrical equipment of a board of education.

"Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.
“Truck driver” means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

“Warehouse clerk” means personnel employed to be responsible for receiving, storing, packing and shipping goods.

“Watchman” means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

“Welder” means personnel employed to provide acetylene or electric welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee’s hours of employment or the methods or sources of compensation.

Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article, may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county board of education may establish salary schedules which shall be in excess of the state minimum fixed by this article, these county schedules to be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county.

In establishing such local salary schedules, no county, after the first day of July, one thousand nine hundred eighty-one, shall reduce the amount of money that is the difference between the existing state minimum pay scale and the county’s
pay scale as of the first day of January, one thousand nine hundred eighty-one, except that a county's pay scale may be reduced when such pay scale is provided from excess levy funds and such excess levy is not renewed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

The state board of education is authorized to establish other class titles of service personnel positions and jobs not listed in this section. The state board of education is further authorized to provide appropriate pay grades for such positions and jobs but pay shall be established within the minimum salary scale in section eight-a of this article.

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as determined and established by the court.

The new provisions of this section shall become effective the first day of July, one thousand nine hundred eighty-two.
§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE

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CLASS TITLE

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| Accountant II | E |
| Accountant III | F |
| Aide I | A |
| Aide II | B |
| Aide III | C |
| Audiovisual Technician | C |
| Auditor | G |
| Bus Operator | D |
| Buyer | F |
| Cabinetmaker | G |</p>
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<td>Electronic Technician I</td>
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<td>Lubrication Man</td>
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<td>Machinist</td>
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<td>Mail Clerk</td>
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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
Sanitation Plant Operator ____________________________ 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

On and after the first day of July, one thousand nine hundred seventy-nine, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale” as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the “state minimum pay scale” set forth in this section.

Any service employee required to work on any legal holiday shall be paid at a rate one and one-half times his usual hourly rate.
CHAPTER 56

(S. B. 528—By Mr. Ash and Mr. Galperin)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight-b and fifteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to seniority rights for service personnel; establishing an order of preference for filling positions to be used in conjunction with seniority; defining the word “promotion”; defining classification category of employment; providing an alternative procedure for making extra-duty assignments; relating to the employment of service personnel substitutes; defining the time period in which county boards must fill vacancies; and providing a method for filling the vacancies.

Be it enacted by the Legislature of West Virginia:

That sections eight-b and fifteen, 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-4-8b. Seniority rights for school personnel.

§18A-4-15. Employment of service personnel substitutes.

§18A-4-8b. Seniority rights for school personnel.

1 (a) A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight, article four of this chapter, on the basis of seniority, qualifications and evaluation of past service in the following order:

2 (1) Regularly employed service personnel.

3 (2) Service personnel whose employment has been discontinued in accordance with this section.

4 (3) Substitute service personnel.

5 (4) New service personnel.

6 (b) The county board of education may not prohibit a service employee from retaining or continuing his employment in
any positions or jobs held prior to the effective date of this section.

A promotion shall be defined as any change in his employment that the employee deems to improve his working circumstance within his classification category of employment and shall include a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment. Each class title listed in section eight, article four of this chapter shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment. The cafeteria manager class title shall be included in the same classification category as cooks. The executive secretary class title shall be included in the same classification category as secretaries.

For purposes of determining seniority under this section, an employee's seniority begins on the date that he enters into his assigned duties.

Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments, shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of four fifths of the employees within that classification category of employment.

All decisions by county boards of education concerning reduction in work force of all personnel shall be made on the basis of seniority, as hereinafter provided:

(1) The seniority of any such service personnel shall be determined on the basis of the length of time the employee has been employed by the county board of education within a particular job classification. For the purpose of establishing seniority for a preferred recall list as hereinafter provided,
when an employee has been employed in one or more classifications, the seniority accrued in each previous classification shall be retained by the employee.

Should a county board of education be required to reduce the number of employees within a particular job classification, the employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy. Provided, That if there is no job vacancy for employment within such classification or grades of classification, he shall be employed in any other job classification which he previously held with the county board if there is a vacancy and shall retain any seniority accrued in such job classification or grade of classification.

If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

(2) The seniority of professional personnel shall be determined on the basis of the length of time the employee has been employed by the county board of education. For the purposes of establishing seniority for a preferred recall list as hereinafter provided, when an employee holds valid certification or licensure in one or more areas, the seniority shall accrue in each area.

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter: Provided, however, That such employee shall be employed in any other position for which he is certified and/or licensed if his seniority is greater than the seniority of any other employee in that area of certification and/or licensure.

All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

Employees placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s), where they had previously been employed,
Employees on the preferred recall list shall not forfeit their right to recall by the county board if compelling reasons require an employee to refuse an offer of reemployment by the county board.

The county board shall be required to notify all employees on the preferred recall list of all position openings that from time to time exist. Such notice shall be sent by certified mail to the last known address of the employee; it shall be the duty of each such employee to notify the county board of any change in the address of such employee.

No position openings may be filled by the county board, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

§18A-4-15. Employment of service personnel substitutes.

The county board may employ and the county superintendent, subject to the approval of the county board of education, may employ and assign substitute service personnel to perform any of the following duties:

1. To fill the temporary absence of another service employee;
2. To fill the position of a regular service employee on leave of absence: Provided, That if such leave of absence is to extend beyond thirty days, the board, within ten working days from the commencement of the leave of absence, shall give regular employee status to a person hired to fill such position: Provided, however, That if a board has in effect an official, written policy of posting job vacancies, it shall be allowed twenty working days to fill this position. The person employed on a regular basis shall be selected under the procedure set forth in section eight-b of this article. The substitute shall hold such position and regular employee status only until the regular employee returns to such position and shall have and shall be accorded all rights, privileges and benefits pertaining to such position;
3. To perform the service of a service employee who is authorized to be absent from duties without loss of pay;
4. To temporarily fill a vacancy in a permanent position
caused by severance of employment by the resignation, retirement, permanent disability or death of the regular service employee who had been assigned to fill such position: 

Provided, That within ten working days from the commencement of the vacancy, the board shall fill such vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter and such person hired to fill the vacancy shall have and shall be accorded all rights, privileges and benefits pertaining to such position: 

Provided, however, That if a board has in effect an official, written policy of posting job vacancies, it shall be allowed twenty working days to fill the vacancy;

(5) To fill the vacancy created by a regular employee's suspension: 

Provided, That a substitute service employee shall not be assigned to fill the vacancy on a permanent basis until such termination by the county board of education becomes final.

The salary of a substitute service employee shall be based upon his years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he is employed.

Before any service employee enters upon his duties, he shall execute with the county board of education a written contract as provided in section five, article two of this chapter.

CHAPTER 57
(Com. Sub. for H. B. 1415—By Miss Davis and Mr. Moore)

[Passed March 13, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duty-free lunch periods for certain teachers and service personnel; and providing a planning period for certain teachers within each regular school day.
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Be it enacted by the Legislature of West Virginia:

That section fourteen, 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-4-14. Duty-free lunch and daily planning period for certain employees.

1. (1) Notwithstanding the provisions of section seven, article two of this chapter, every teacher who is employed for a period of time more than one half the class periods of the regular school day and every service personnel whose employment is for a period of more than three and one-half hours per day and whose pay is at least the amount indicated in the "state minimum pay scale" as set forth in section eight-a of this article shall be provided a daily lunch recess of not less than thirty consecutive minutes, and such employee shall not be assigned any responsibilities during this recess. Such recess shall be included in the number of hours worked, and no county shall increase the number of hours to be worked by an employee as a result of such employee being granted a recess under the provisions of this section.

2. (2) Every teacher who is regularly employed for a period of time more than one half the class periods of the regular school day shall be provided at least one planning period within each regular school day to be used to complete necessary preparations for the instruction of pupils. Such planning period shall be the length of the usual class period in the school to which such teacher is assigned, and shall be not less than thirty minutes. No teacher shall be assigned any responsibilities during this period, and no county shall increase the number of hours to be worked by a teacher as a result of such teacher being granted a planning period subsequent to the adoption of this section (March 13, 1982).

Principals, and assistant principals, where applicable, shall cooperate in carrying out the provisions of this subsection, including, but not limited to, assuming control of the class period or supervision of students during the time the teacher
is engaged in the planning period. Substitute teachers may also be utilized to assist with classroom responsibilities under this subsection: Provided, That any substitute teacher who is employed to teach a minimum of two consecutive days in the same position shall be granted a planning period pursuant to this section.

(3) Nothing in this section shall be construed to prevent any teacher from exchanging his lunch recess or planning period or any service personnel from exchanging his lunch recess for any compensation or benefit mutually agreed upon by the employee and the county superintendent of schools or his agent: Provided, That a teacher and the superintendent or his agent may not agree to terms which are different from those available to any other teacher granted rights under this section within the individual school or to terms which in any way discriminate among such teachers within the individual school, and that service personnel granted rights under this section and the superintendent or his agent may not agree to terms which are different from those available to any other service personnel within the same classification category granted rights under this section within the individual school or to terms which in any way discriminate among such service personnel within the same classification category within the individual school.

CHAPTER 58
(S. B. 276—By Mr. Heck)

(Passed March 3, 1982; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section sixteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries, wages and other benefits; relating to extra-curricular assignments; deleting provision providing that if properly certified replacement for a coach or a band director cannot be employed the employee under the
extracurricular assignment agreement will continue that assignment; deleting provision that dismissal of coach or band director under employment contract or extracurricular assignment agreement shall be grounds for termination of other contract; and deleting requirement that coach or band director who resigns from his extracurricular assignment may be placed on transfer list.

Be it enacted by the Legislature of West Virginia:

That section sixteen, 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-4-16. Extracurricular assignments.

1 (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

2 (2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.

3 (3) The terms and conditions of the agreement between the employee and the board of education shall be in writing and signed by both parties.

4 (4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board.
CHAPTER 59
(H. B. 1101—By Mr. Whitlow and Mr. Gilliam)

[Passed March 12, 1982; in effect April 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-five and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the delivery of ballots and election supplies by special messengers; increase in allowance and mileage; compensation of election officials generally; increase in expenses and mileage.

Be it enacted by the Legislature of West Virginia:

That sections twenty-five and forty-four, 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.

§3-1-25. Supplies by special messenger.

In case any commissioner of election so appointed shall fail to appear at the offices of the clerks of such county and circuit courts, by the close of the second day, prior to any election, as required by the preceding section, the board of ballot commissioners, or the chairman thereof, shall forthwith dispatch a special messenger to the commissioners of election of each respective precinct with the ballots, registration records, ballot boxes, poll books and other supplies for such precinct. Such messenger, if not a county employee, shall be allowed five dollars for this service and, even if he be a county employee, twenty cents a mile for the distance necessary to be traveled by him, and shall promptly report to the clerks of the circuit court and county commission, respectively, and file with such clerks the receipts of the person to whom he delivered such ballots and other supplies, and his affidavit, stating when and to whom he delivered them.
§3-1-44. Compensation of election officials; expenses.

Each ballot commissioner shall be allowed and paid a sum, to be fixed by the county commission, not exceeding fifty dollars for each day he shall serve as such, but, in no case shall a ballot commissioner receive allowance for more than ten days' services for any one primary, general or special election. Each commissioner of election and poll clerk shall be allowed and paid a sum, to be fixed by the county commission, not exceeding fifty dollars for one day's services for attending the school of instruction for election officials and a sum not exceeding fifty dollars for his services at any one election: Provided, That each commissioner of election and poll clerk shall be paid and allowed a sum not exceeding fifty dollars for his services at any of the three special elections hereinafter specified and described. The commissioners of election obtaining and delivering the election supplies, as provided in section twenty-four of this article, and returning them as provided in articles five and six of this chapter, shall be allowed and paid an additional sum, likewise fixed by the county commission, not exceeding fifty dollars for all such services at any one election and, in addition, shall be allowed and paid mileage at the rate of twenty cents per mile necessarily traveled in the performance of such services. The compensation of election officers, cost of printing ballots, and all other expenses incurred in holding and making the return of elections, other than the three special elections hereinafter specified and described, shall be audited by the county commission and paid out of the county treasury.

The compensation of election officers, cost of printing ballots, and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention, and of a special election to ratify or reject the proposals, acts and ordinances of a constitutional convention shall be obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions, and county commissions of the various counties as agents of the state, and
all such expenses shall be audited by the secretary of state. The secretary of state shall prepare and transmit to the county commissions forms on which the county commissions shall certify all such expenses of such special elections to the secretary of state. If satisfied that such expenses as certified by the county commissions are reasonable and were necessarily incurred, the secretary of state shall requisition the necessary warrants from the auditor of the state to be drawn on the state treasurer, and shall mail such warrants directly to the vendors of such special election services, supplies and facilities.

CHAPTER 60

(Com. Sub. for S. B. 313—By Mr. Boettner and Mr. Palumbo)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty-three, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to electronic voting systems generally; providing certain definitions; providing procedure for adopting electronic voting systems; providing procedure for terminating use of electronic voting systems; establishing duty of county commission to acquire vote recording devices, automatic tabulating equipment and to provide a central counting center; providing for approval of electronic voting system by state election commission; authorizing compensation for qualified experts; establishing minimum requirements of electronic voting systems; providing for ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; providing for inspection of vote recording devices; prescribing manner of delivery of vote recording devices; requiring examination of vote recording devices before use; providing for use of reserve vote recording devices in place of vote recording device in
disrepair; establishing procedures at polling places; providing for control of and accounting for ballots and other duties of election officers and penalties for violations; establishing procedures for independent voting in primary elections; establishing procedures for absent voter ballots; establishing procedures for challenged ballots; requiring testing of automatic tabulating equipment; providing procedure for central counting center; providing for post-election custody and inspection of vote recording devices, ballot labels, ballot cards and materials; establishing canvass and recount procedures; defining criminal offenses for tampering with vote recording devices; ballot labels, ballot cards, program decks, standard validation test decks, or other automatic tabulating equipment; and setting forth penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, eight, nine, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four, twenty-six, twenty-seven, twenty-eight and thirty-three, article four-a, 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 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.
§3-4A-3. Procedure for adopting electronic voting systems.
§3-4A-4. Procedure for terminating use of electronic voting systems.
§3-4A-5. Duty of county commission to acquire vote recording devices, acquire use of automatic tabulating equipment, and provide a central counting center.
§3-4A-8. Approval of electronic voting system by state election commission: expenses; compensation of persons examining system.
§3-4A-9. Minimum requirements of electronic voting systems.
§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.
§3-4A-13. Inspection of vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices.
§3-4A-16. Delivery of vote recording devices; time; arrangement for voting.
§3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.
§3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices.
§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.
§3-4A-20. "Independent" voting in primary elections.
§3-4A-21. Absent voter ballots; issuance, processing and tabulation.
§3-4A-26. Test of automatic tabulating equipment.
§3-4A-27. Proceedings at the central counting center.
§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.
§3-4A-33. Tampering with vote recording devices; ballot labels, ballot or ballot cards, program decks, standard validation test decks, or other automatic tabulating equipment; other dishonest practices; attempts; penalty.

§3-4A-2. Definitions.
1 As used in this article, unless otherwise specified:
2 (a) "Automatic tabulating equipment" means all apparatus necessary to electronically count votes recorded on ballot cards and tabulate the results;
3 (b) "Ballot card" means a tabulating card or paper on which votes may be recorded by means of perforating or marking in electronic sensitized ink or pencil;
4 (c) "Ballot labels" means the cards, papers, booklet, pages or other material showing the names of offices and candidates and the statements of measures to be voted on, which are placed on the vote recording device;
5 (d) "Central counting center" means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballot cards;
6 (e) "Electronic voting system" is a means of conducting an election whereby votes are recorded on ballot cards by means of marking with electronic sensitized ink or perforating, and such votes are subsequently counted by automatic tabulating equipment at the central counting center;
7 (f) "Program deck" means the actual punch card deck or decks containing the program for counting and tabulating the votes, including the "application program deck";
8 (g) "Application program deck" means the punch card deck containing specific option cards, used and necessary to modify the program of general application, to conduct and tabulate a specific election according to applicable law;
9 (h) "Standard validation test deck" means a deck of ballot cards wherein all voting possibilities which can occur in an election are represented; and
10 (i) "Vote recording device" means equipment in which ballot labels and ballot cards are placed to allow a voter to record his vote.
§3-4A-3. Procedure for adopting electronic voting systems.

An electronic voting system that has been approved in accordance with section eight of this article may be adopted for use in general, primary and special elections in any county by either of the following procedures, and not otherwise:

1. By a majority of the members of the county commission voting to adopt the same at a special public meeting called for the purpose of said adoption, with due notice thereof published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved: Provided, That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county commission shall enter an order of its intention to adopt the use of an electronic voting system, it shall thereafter forthwith cause to be published a certified copy of such order as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The first publication of such order shall not be less than twenty days after the entry of such order. Such county commission shall not adopt the use of an electronic voting system until six months after the entry of such order of its intention to adopt the same. Promptly after the expiration of six months after the entry of such order of intention to adopt the use of an electronic voting system, if no petition has theretofore been filed with such county commission requesting a referendum on the question of adoption of an electronic voting system as hereinafter provided, such county commission shall enter a final order adopting the electronic voting system, and the electronic voting system shall thereby be adopted.

If five percent or more of the registered voters of such county shall sign a petition requesting that an electronic voting system be not adopted for use in such county and such petition be filed with the county commission of such county within six months after the entry of such order of intention to adopt the use of an electronic voting system, such county commission shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: "Shall an electronic voting system be adopted in ..........County?" If this question be answered in the
affirmative by a majority of the voters in such election upon
the question, an electronic voting system shall thereby be
adopted. If such question shall not be answered in the
affirmative by such majority, the use of an electronic voting
system shall not be adopted.

(2) By the affirmative vote of a majority of the voters of
such county voting upon the question of the adoption of an
electronic voting system in such county. If five percent or
more of the registered voters of such county shall sign a
petition requesting the adoption of an electronic voting
system for use in such county, and such petition be filed with
the county commission of such county, such county
commission shall submit to the voters of such county at the
next general or primary election, following by not less than
six months the date of the filing of such petition, the
question: “Shall an electronic voting system be adopted in
............. County?” If this question be answered in the
affirmative by a majority of the voters of such county voting
upon the question, an electronic voting system shall thereby
be adopted. If such question shall not be answered in the
affirmative by such majority, the use of an electronic voting
system shall not be adopted: Provided, That nothing in this
section shall be construed to affect or invalidate the adoption
of any electronic voting system by any county in accord-
ance with applicable law prior to the effective date of this
section.

§3-4A-4. Procedure for terminating use of electronic voting
systems.

1 The use of an electronic voting system may be terminated:
2 (1) By a majority of the members of the county
commission voting to terminate use of the system at a special
public meeting called for the purpose of said termination,
with due notice thereof published as a Class II-0 legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area
for such publication shall be the county involved: Provided,
That such meeting shall be held not less than six months
prior to a general election or six months prior to a primary
election. If at such meeting, such county commission shall
enter an order of its intention to terminate use of an electronic
voting system, it shall thereafter forthwith cause to be
published a certified copy of such order as a Class II-0 legal
advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The first publication of such order shall not be less than twenty days after the entry of such order. Such county commission shall not terminate the use of an electronic voting system until ninety days after the entry of such order of its intention to terminate the same. Promptly after the expiration of ninety days after the entry of such order of intention to terminate the use of an electronic voting system, if no petition has theretofore been filed with such county commission requesting a referendum on the question of termination of the electronic voting system as hereinafter provided, such county commission shall enter a final order terminating the use of the electronic voting system, and the use of electronic voting system shall thereby be terminated. If a petition has been submitted as provided in this subdivision, the county commission shall not terminate the use of the system but shall proceed as provided in this subdivision.

If five percent or more of the registered voters of such county shall sign a petition requesting that the use of an electronic voting system be terminated in such county and such petition be filed with the county commission of such county within ninety days after the entry of such order of intention to terminate the use of an electronic voting system, such county commission shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: “Shall the use of an electronic voting system be terminated in ............County?” If this question be answered in the affirmative by a majority of the voters in such election upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall continue.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of termination of the use of an electronic voting system in such county. If five percent or more of the registered voters of such county shall sign a petition requesting the termination of the use of an electronic voting system in such county, and such petition be filed with the county commission of such county, such county commission shall submit to the voters of such county
at the next general or primary election, following by not less
than ninety days the date of the filing of such petition, the
question: "Shall the use of an electronic voting system be
terminated in .............County?" If this question be
answered in the affirmative by a majority of the voters of such
county voting upon the question, the use of an electronic
voting system shall thereby be terminated. If such question
shall not be answered in the affirmative by a majority of the
voters of such county voting upon the question, the use of an
electronic voting system shall thereby continue.

§3-4A-5. Duty of county commission to acquire vote recording
devices, acquire use of automatic tabulating
equipment, and provide a central counting center.

If the use of an electronic voting system shall have been
adopted as hereinbefore provided, it shall be the duty of the
county commission of such county to acquire the necessary
number of vote recording devices to supply all or part of the
election precincts within such county as soon as possible, and
to acquire such reserve vote recording device or devices as
will be deemed necessary. All such acquisition of vote
recording devices shall be by sealed competitive bidding.

If it shall be impossible for the county commission to
comply with its order or with the decision of the voters in a
referendum at the next primary or general election, it shall in
any event do so at the next following primary or general
election, whichever shall first occur.

It shall be the further duty of the county commission of
such county to acquire prior to any election in which such
electronic voting system is to be used, the use of automatic
tabulating equipment approved by the state election
commission, for the purpose of counting votes in such
election. In addition, the county commission of such county
shall provide the necessary central counting center for use in
said election. Such central counting center shall be located at
the county seat of the county involved.

§3-4A-8. Approval of electronic voting system by state election
commission; expenses; compensation of persons
examining system.

Any person or corporation owning or being interested in
any electronic voting system may apply to the state election
commission to the end that such system may be examined
and a report be made on its accuracy, efficiency, capacity and
5 safety. Upon the written application of any vendor tendered
6 to the secretary of state or to any clerks in his office in charge
7 of receiving filings for any purpose, it shall be the
8 nondelegable, nondiscretionary duty of the secretary of state
9 to fix a date, time and place, not more than thirty days after
10 the receipt of such application, for a meeting of the state
11 election commission for mutual consideration of such
12 application, and to mail notice thereof by certified mail to
13 each member of the commission.
14 The state election commission shall appoint two qualified
15 computer experts who are not members of the same political
16 party to examine the system and make full reports thereon to
17 the commission within thirty days from the date of the
18 application. They shall state in the report whether or not the
19 system so examined complies with the requirements of this
20 article and can be safely used by voters at elections under the
21 conditions prescribed in this article. If the report be in the
22 affirmative on said question, the system may be approved by
23 the commission and, if approved by the commission, a
24 system of its make and design may be adopted for use at
25 elections as herein provided: Provided, That under no
26 circumstances shall a system be approved that is not capable
27 of accurately tabulating returns based upon all possible
28 combinations of voting patterns including, but not limited to,
29 crossover voting and in accordance with section five, article
30 six of this chapter.
31 No electronic voting system shall be used at any election
32 unless it has heretofore or hereafter been approved under this
33 section or its former provisions. Each of the two qualified
34 computer experts appointed by the commission shall be
35 entitled to reasonable compensation and expenses in making
36 such examination and report, and such compensation shall
37 be paid by the person or corporation applying for such
38 examination, which sum shall be paid in advance of making
39 the examination and which sum shall be the sole
40 compensation to be received by any such expert for his work
41 hereunder.

§3-4A-9. Minimum requirements of electronic voting systems.
1 An electronic voting system of particular make and design
2 shall not be approved by the state election commission or be
3 purchased, leased or used, by any county commission unless
4 it shall fulfill the following requirements:
(1) It shall secure or ensure the voter absolute secrecy in the act of voting, or, at the voter's election, shall provide for open voting;

(2) It shall be so constructed that no person except in instances of open voting, as herein provided for, can see or know for whom any voter has voted or is voting;

(3) It shall permit each voter to vote at any election for all persons and offices for whom and which he is lawfully entitled to vote, whether or not the name of any such person appears on a ballot label as a candidate; and it shall permit each voter to vote for as many persons for an office as he is lawfully entitled to vote for; and to vote for or against any question upon which he is lawfully entitled to vote and the automatic tabulating equipment used in such electronic voting systems shall reject choices recorded on any ballot card or paper ballot if the number of such choices exceeds the number to which a voter is entitled;

(4) It shall permit each voter to deposit, write in, or affix upon devices to be provided for that purpose, ballots containing the names of persons for whom he desires to vote whose names do not appear upon the ballot labels;

(5) It shall permit each voter to change his vote for any candidate and upon any question appearing upon the ballot labels up to the time when his ballot or ballot card is deposited in the ballot box;

(6) It shall contain a program deck consisting of cards that are sequentially numbered and capable of tabulating all votes cast in each election;

(7) It shall contain two standard validation test decks approved as to form and testing capabilities by the state election commission;

(8) It shall correctly record and count accurately all votes cast for each candidate and for and against each question appearing upon the ballots or ballot labels;

(9) It shall permit each voter at any election other than primary elections, by one mark or punch to vote a straight party ticket, and by one mark or punch to vote for all candidates of one party for presidential electors; and to vote a mixed ticket selected from the candidates of any and all parties and from independent candidates; and it shall permit the proper counting, to the fullest extent possible, of all votes cast for all candidates: Provided, That, in the event of crossover voting from a straight party ticket, the system shall
not discard any vote on the straight ticket, unless (i) a
candidate opposite the discarded vote on the straight ticket
has been clearly chosen by the voter, or (ii) the voter, by mark
or punch has clearly indicated which choices on each ticket,
not in excess of the total number permitted, the voter has
made, or (iii) the choices made by the voter are so
contradictory that the voter's choice is indiscernable, in
which event, all votes for the candidates for such office shall
be discarded;

(10) It shall permit each voter in primary elections to vote
only for the candidates of the party with which he has
declared his affiliation, and preclude him from voting for any
candidate seeking nomination by any other political party,
permit him to vote for the candidates, if any, for nonpartisan
nomination or election, and permit him to vote on public
questions;

(11) It shall be provided with means for sealing the vote
recording device to prevent its use and to prevent tampering
with ballot labels, both before the polls are open or before the
operation of the vote recording device for an election is begun
and immediately after the polls are closed or after the
operation of the vote recording device for an election is
completed;

(12) It shall have the capacity to contain the names of
candidates constituting the tickets of at least nine political
parties, and to accommodate the wording of at least fifteen
questions;

(13) It shall be durably constructed of material of good
quality and in a workmanlike manner and in a form which
shall make it safely transportable;

(14) It shall be so constructed with frames for the placing
of ballot labels and with suitable means for the protection of
such labels, that the labels on which are printed the names of
candidates and their respective parties, titles of offices, and
wording of questions shall be so reasonably protected from
mutilation, disfigurement or disarrangement;

(15) It shall bear a number that will identify it or
distinguish it from any other machine;

(16) It shall be so constructed that a voter may easily learn
the method of operating it and may expeditiously cast his
vote for all candidates of his choice, and upon any public
question; and

(17) It shall be accompanied by a mechanically operated
91 instruction model which shall show the arrangement of ballot
92 labels, party columns or rows, and questions.

§3-4A-12. Ballot label arrangement in vote recording devices;
when uniform numbering required; drawing by lot
to determine position of candidates on ballots or
ballot labels; sealing of devices; record of
identifying numbers.

1 When the ballot labels are printed and delivered to the clerk
2 of the county commission, he shall place them in the vote
3 recording devices in such manner as will most nearly
4 conform to the arrangement prescribed for paper ballots, and
5 as will clearly indicate the party designation or emblem of
6 each candidate. Each column, row or page containing the
7 names of the office and candidates for such office shall be so
8 arranged as to clearly indicate the office for which the
9 candidate is running. The names of the candidates for each
10 office indicated shall be placed on the ballot label and the
11 arrangement of the ballot label shall conform as nearly as
12 practicable to the plan herein given:

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td>For House of Delegates</td>
<td>For House of Delegates</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>Democratic: 79</td>
<td>80 Republican</td>
</tr>
<tr>
<td>Democratic: 81</td>
<td>82 Republican</td>
</tr>
<tr>
<td>Democratic: 83</td>
<td>84 Republican</td>
</tr>
<tr>
<td>Democratic: 85</td>
<td>86 Republican</td>
</tr>
</tbody>
</table>

13 or:
The secretary of state shall assign a uniform number applicable to all counties using electronic voting for all straight party tickets and for all candidates running for offices to be voted upon by all of the voters of the state. The numbers so designated by the secretary of state shall be used by all counties using electronic voting systems irrespective of the fact that in one or more such counties the number or numbers so designated may result in other than strict sequential ballot arrangement.

After taking into account the numbers so assigned by the secretary of state to straight party tickets and all candidates for offices to be voted upon by all the voters of the state, the clerk of the circuit court shall appoint a time at which all candidates for the House of Delegates, magistrate and the office of delegate to a political party national convention are to appear in his office for the purpose of drawing by lot to determine where their names will appear on the ballots or ballot labels. The clerk shall give due notice of such time to each such candidate by registered or certified mail, return receipt requested. At the time appointed, all such candidates for the House of Delegates, magistrate and the office of
delegate to a political party national convention shall assemble in the office of such clerk and such candidates shall then proceed to draw by lot to determine where their names shall appear on the ballots or ballot labels. The number so drawn by each such candidate shall determine where his or her name shall appear on the ballots or ballot labels. In the event any candidate or candidates fail to appear at the time appointed, the clerk shall draw for such absent candidate or candidates in the presence of those candidates assembled, if any, and the number so drawn by the clerk shall determine where the name of any absent candidate or candidates shall appear on the ballots or ballot labels. The circuit clerk shall record the number drawn by each candidate and his name in an appropriate book. The ballot commissioners shall proceed to have the ballot labels printed according to the provisions of this article. After receiving the printed ballot labels, the clerk of the county commission shall ascertain their accuracy and proceed to have the ballot labels placed in the vote recording devices. The clerk of the county commission shall then seal the vote recording devices so as to prevent tampering with ballot labels. The clerk of the county commission shall then enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific vote recording device or devices to be used in that precinct.

§3-4A-13. Inspection of vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices.

When the clerk of the county commission has completed the preparation of the vote recording devices, as provided in the next preceding section, and not later than seven days before the date of the election, he shall notify the members of the county commission and the ballot commissioners that the devices are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place wherein the vote recording devices are stored, not later than five days before the day of the election, and shall inspect the devices to determine whether the requirements of this article have been met. Notice of the place and time of such inspection shall be published, no less than three days prior thereto, as a Class I-0 legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. Any candidate, and one representative of each political party on the ballot may be present during such examination. If the devices are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts. The devices shall then be secured in double lock rooms. The county clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices for transportation to the polls. Upon such removal of the devices, the county clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the same were found to be sealed when removed for transportation to the polls.

Not later than three days before the election the election commissioner of each precinct who shall have been previously designated by the ballot commissioners, shall attend at the office of the clerks of the circuit court and county commission of such county to receive the necessary election records, books and supplies required by law. Such election commissioners shall receive the per diem mileage rate prescribed by law for this service. Such election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. Such receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.

§3-4A-16. Delivery of vote recording devices; time; arrangement for voting.

The clerk of the county commission shall deliver or cause to be delivered each vote recording device to the polling place where it is to be employed. Such delivery shall be made not less than one hour prior to the opening of the polls and shall be made in the presence of the precinct election commissioners. At the time of the delivery of the vote
recording device, it shall be sealed in such a way to prevent its
use prior to the opening of the polls and to prevent any
tampering with the ballot labels. Immediately prior to the
opening of the polls on election day, the seal shall be broken
and the vote recording device shall be opened in the presence
of the precinct election commissioners, who shall certify in
writing signed by them to the clerk of the county
commission, that the devices have been delivered in their
presence, that the devices were found to be sealed upon such
delivery, and that the seals have been broken and the devices
opened in their presence. The election commissioners shall
then cause the vote recording device to be arranged in the
voting booth in such manner that the front of the vote
recording device, on which the ballot labels appear, will not
be visible, when the vote recording device is being operated,
to any person other than the voter if the voter shall elect to
close the curtain, screen or hood to the voting booth.

§3-4A-17. Check of vote recording devices before use;
corrections; reserve vote recording devices.
Before permitting the first voter to vote, the election
commissioners shall examine the vote recording devices to
ascertain whether the ballots or ballot labels are arranged as
specified on the facsimile diagram furnished to the precinct.
If the ballots or ballot labels are arranged incorrectly, the
commissioners shall immediately notify the clerk of the
county commission of the foregoing facts in writing,
indicating the number of the device, and obtain from such
clerk a reserve vote recording device, and thereafter proceed
to conduct the election. Any reserve vote recording device so
used shall be prepared for use by the clerk or his duly
appointed deputy and said reserve vote recording device
shall be prepared, inspected and sealed, and delivered to the
polling place wherein the seal shall be broken and such
device opened in the presence of the precinct election
commissioners who shall certify in writing signed by them to
the clerk of the county commission, that the reserve vote
recording device was found to be sealed upon delivery to the
polling place, that the seal was broken and the device opened
in their presence at the polling place. The vote recording
device found to have been with incorrect ballot labels shall be
returned immediately to the custody of the clerk who shall
then promptly cause such vote recording device to be
§3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices.

1 If, during the conduct of an election, a vote recording device becomes in a state of disrepair so that it cannot be operated in a manner that will comply with the provisions of this article, the election commissioners shall seal the device in such manner as to prevent further voting thereon. Then the election commissioners shall secure from the county clerk a reserve vote recording device, which shall be prepared, inspected and delivered to the polling place wherein the seal shall be broken and such device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place.

The commissioners shall proceed to conduct the election.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.

(1) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(2) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote recording device which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated.

(3) The poll clerk shall issue to each voter when he signs the pollbook a card or ticket numbered to correspond to the number on the pollbook of such voter, and in the case of a primary election, indicating the party affiliation of such voter, which numbered card or ticket shall be presented to the election commissioner in charge of the vote recording device.

(4) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths so that they will be in clear view of
the election commissioners, open the vote recording devices, place them in the voting booths, and examine them to see that they have the correct ballots or ballot labels by comparing them with the sample ballots, and are in proper working order. They shall open and check the ballots, ballot cards, supplies, records and forms, and post the sample ballots or ballot labels and instructions to voters. Upon ascertaining that all ballots, ballot cards, supplies, records and forms arrived intact, the election commissioners shall so certify in writing their findings upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies shall be so noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot card stub of each ballot card in their possession and report in writing to the clerk of the county commission the number of ballot cards received. They shall issue such ballot cards in sequential order to each voter.

(5) Each voter shall be instructed how to operate the vote recording device before he enters the voting booth.

(6) Any voter who shall spoil, deface or mutilate the ballot or ballot card delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot or ballot card delivered to him shall, before leaving the election room, return such ballot or ballot card to the poll clerks. When a spoiled or defaced ballot or ballot card is returned, the poll clerks shall make a minute of the fact on the pollbooks, at the time, and the word “spoiled” shall be written across the face of the ballot or ballot card and it shall be placed in an envelope for spoiled ballots or ballot cards.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots or ballot cards during the election and the number of ballots or ballot cards remaining not voted. The election commissioners shall also ascertain from the pollbooks the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots or ballot cards cast, the number of ballots or ballot cards spoiled during the election and the number of ballots or ballot cards unused. All unused ballots or ballot cards shall at the same
time be returned to the clerk of the county commission who
shall count them and record the number. If there is no
discrepancy, the unused ballots or ballot cards shall be
destroyed forthwith, before a representative of each party on
the ballot, by fire or otherwise, by the clerk of the county
commission or a duly designated deputy clerk. If there is a
discrepancy, the unused ballots or ballot cards shall be
impounded and secured under double locks until the
discrepancy is resolved. The county clerk and the president
or president pro tempore of the county commission shall each
have a key. Upon resolution of the discrepancy, the unused
ballots or ballot cards shall forthwith, before a
person representative of each party on the ballot, be destroyed by
fire or otherwise, by the clerk of the county commission or a
duly designated deputy clerk.

Each commissioner who is a member of an election board
which fails to account for every ballot or ballot card delivered
to it shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not more than one thousand dollars or
confined in the county jail for not more than one year, or both.

The board of ballot commissioners of each county, or the
chairman thereof, shall preserve the ballots or ballot cards
that are left over in their hands, after supplying the precincts
as provided, until the close of the polls on the day of election,
and such ballots or ballot cards, shall then be destroyed by
such board, or the chairman thereof, by fire or otherwise.

(7) Where ballot cards are used, the voter, after he has
marked his ballot card, shall, before leaving the voting booth,
place the ballot card inside the envelope provided for this
purpose, with the stub extending outside said envelope, and
return it to an election commissioner who shall remove the
stub and deposit the envelope with the ballot card inside in
the ballot box. No ballot card from which the stub has been
detached shall be accepted by the officer in charge of the
ballot box, but such ballot card shall be marked “spoiled” and
placed with the spoiled ballots or ballot cards.

(8) The precinct election commissioners shall prepare a
report in quadruplicate of the number of voters who have
voted, as indicated by the pollbooks, and shall place two
copies of this report in the ballot box, which thereupon shall
be sealed with a paper seal signed by the election
commissioners so that no additional ballots may be deposited
or removed from the ballot box. Two election commissioners
of different political parties shall forthwith deliver the ballot box to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor, which receipt shall carefully set forth in detail any and all irregularities pertaining to the ballot boxes and noted by the precinct election officers.

The receipt shall be prepared in duplicate, a copy of which shall remain with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place shall be noted on the two remaining copies of the report, which shall be immediately mailed to the clerk of the county commission.

(9) The pollbooks, register of voters, unused ballots or ballot cards, spoiled ballots or ballot cards and other records and supplies shall be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

§3-4A-20. "Independent" voting in primary elections.

If at any primary elections, nonpartisan candidates for office and public questions are submitted to the voters and on which candidates and questions persons registered as "independent" are entitled to vote, as provided in section eighteen, article two of this chapter, the election officers shall provide a vote recording device so that such "independent" voters may vote only those portions of the ballot or ballot card relating to the nonpartisan candidates and the public questions submitted, or provide a ballot card containing only provision for voting for those candidates and/or upon those issues common to the ballots provided to all voters regardless of political party affiliation.

If vote recording devices are not available for the "independent" voters, provision shall be made for sealing the partisan section or sections of the ballot or ballot labels on a vote recording device using temporary seals, thus permitting the independent voter to vote for the nonpartisan section or sections of the ballot or ballot labels. After the "independent" voter has voted, the temporary seals may be removed and the device may then be used by partisan voters.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

Absentee voters shall cast their votes on absent voter ballot cards. If absentee voters shall be deemed eligible to vote in
person at the office of the clerk of the circuit court, in accordance with the provisions of article three of this chapter, the clerk of the circuit court of each county shall provide a vote recording device for the use of such absentee voters. For all absentee voters deemed eligible to vote an absent voter's ballot card by mail, in accordance with the provisions of article three of this chapter, the clerk of the circuit court of each county shall prepare and issue an absent voter ballot packet consisting of the following:

(a) One official absent voter ballot card;
(b) One punching tool;
(c) One disposable styrofoam block to be placed behind the ballot card for voting purposes and to be discarded after use by the voter;
(d) One absent voter instruction ballot;
(e) One absent voter's ballot envelope No. 1, unsealed, which shall have no writing thereon and which shall be identical to the secrecy envelope used for placement of ballot cards at the polls; and
(f) One absent voter's ballot envelope No. 2, which envelope shall be marked with the proper precinct number and shall provide a place on its seal for the absent voter to affix his signature. Such envelope shall also otherwise contain the forms and instructions as provided in section five, article three of this chapter, relating to the absentee voting of paper ballots.

Upon receipt of an absent voter's ballot card by mail, the voter shall mark the ballot card with the punch tool and the voter may receive assistance in voting his absent voter's ballot card in accordance with the provisions of section six, article three of this chapter.

After the voter has voted his absent voter's ballot card, he shall (1) enclose the same in absent voter's ballot envelope No. 1, and seal that envelope, (2) enclose sealed absent voter's ballot envelope No. 1 in absent voter's ballot envelope No. 2, (3) complete and sign the forms, if any, on absent voter's ballot envelope No. 2 according to the instructions thereon, and (4) mail, postage prepaid, sealed absent voter's ballot envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote, unless the voter has appeared in person, in which event he shall hand deliver the sealed absent voter's ballot envelope No. 2 to the clerk.
Upon receipt of such sealed envelope, the circuit clerk shall (1) enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his challenge, if any, to the absent voter's ballot; (3) enter the required information into a record of persons making application for and voting an absent voter's ballot by personal appearance or by mail (the form of which record and information to be entered therein shall be prescribed by the secretary of state); and (4) place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of this article or, in case of a challenged ballot, to the county commission sitting as a board of canvassers.

When absent voters' ballots have been delivered to the election board of any precinct, the election commissioners shall, at the close of the polls, proceed to determine the legality of such ballots as prescribed in article three of this chapter. The commissioners shall then open the No. 2 envelope. Without opening the absent voter ballot envelope No. 1, the commissioners shall shuffle and intermingle them and deposit same in the ballot box. The commissioner shall provide an absent voter ballot envelope No. 1 for any voted ballot card which, when opened, has no such envelope.

1 If the right of any person to vote be challenged in accordance with provisions of article one of this chapter relating to the challenging of voters, and a vote recording device is used that tabulates the vote as an individual vote, such person shall be permitted to cast his vote by use of the vote recording device. He shall be provided with a challenged ballot card and ballot envelopes for the insertion of the ballot card after voting. There shall be an inner envelope marked with the precinct number for the challenged ballot card. There shall also be an outer envelope for the inner envelope and the challenged voter stub, which envelope shall provide a place for the challenged voter to affix his signature on the seal of such outer envelope.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall remove the outer envelopes. Without opening the inner envelope, the commissioners shall shuffle and intermingle such inner
envelopes. The commissioners shall then open the inner envelopes, remove the ballot cards and add the votes to the previously counted totals.

§3-4A-26. Test of automatic tabulating equipment.

One week prior to the start of the count of the votes recorded on ballots or ballot cards, the clerk of the county commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given not less than forty-eight hours nor more than two weeks prior thereto by publication of such notice as a Class I-0 legal advertisement, in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved.

The test shall be open to representatives of the political parties, candidates, the press and the public. It shall be conducted five times by processing two separate sets of a preaudited group of ballots or ballot cards as appropriate, so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure. It shall include for each multi-candidate office one or more ballot cards which have crossover votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and applicable law, and it shall include for each office one or more ballot cards which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If, in the process of any of the test counts, any error is detected, the cause of such error shall be ascertained and corrective action promptly taken. After the completion of said corrective action, the test counts shall continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by them, the nature of the error, the cause thereof and the type of corrective action taken. Such certification shall be recorded in the office of the clerk of the county commission in the miscellaneous record book. Immediately after conclusion of this completed test, a certified duplicate copy of the program deck shall be sent by certified mail to the offices of the state election commission, where it shall be
preserved and secured for one year, and made available for comparison or analysis by order of a circuit court or the supreme court of appeals.

The program deck to be used in the election shall immediately be certified by the county commission to be free from error as determined by the test, shall be placed with such certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his possession. Such sealed container shall be opened to conduct the test required to be conducted immediately before the start of the official count.

The test shall be repeated immediately before the start of the official count. The test shall also be conducted at the conclusion of the official count before the count is approved as errorless and before the election returns are approved as official.

All results of all of the tests shall be immediately certified by the county commission and filed in the office of the clerk of the county commission and immediately recorded in the miscellaneous record book. On completion of the count, the program deck, test materials and ballot cards shall be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks with individual keys for each lock. Said numbers of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his possession.

§3-4A-27. Proceedings at the central counting center.

1 (1) All proceedings at the central counting center shall be under the supervision of the clerk of the county commission, and shall be conducted under circumstances which allow observation by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit such observation. Those persons entitled to be present shall include all candidates whose names appear on the ballots being counted, or if such candidate be absent, a representative of such candidate, and two representatives of each political party on such ballot, who
shall be chosen by the local chairman of such political party's executive committee. A reasonable number of the general public shall also be freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission shall, during the proceedings at the central counting center, be granted such admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose shall touch any ballot or ballot card or other official records and papers utilized in the election during such observation. All persons who are engaged in processing and counting of the ballots shall be representative of each political party on the ballot, and shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. Such deputies shall be issued an official badge or identification card which shall be assigned an identity control number, and such deputies shall prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards shall be returned to the county clerk. If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot card in the presence of representatives of each political party on the ballot and substituted for the damaged ballot card. All duplicate ballot cards shall be clearly labeled "duplicate" and shall bear a serial number which shall be recorded on the damaged or defective ballot card and on the replacement ballot card.

(2) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, shall, when certified by the board of canvassers, constitute the official return of each precinct or election district. Further, all such returns shall be printed on a precinct basis. Upon completion of the count, the returns shall be open to the public by posting such returns precinct by precinct at the central counting center. Upon completion of the canvass, the returns shall be posted in the same manner.
(3) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the board of canvassers may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(4) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed from the polling place to a proper and secure place of storage.

§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

(1) The vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks shall remain sealed during the canvass of the returns of the election and for a period of seven days thereafter, except that such equipment may be opened for the canvass and it shall be resealed immediately thereafter. During such period any candidate or the local chairman of a political party may be permitted to examine any of the materials so sealed: Provided, That a notice of the time and place of such examination shall be posted at the central counting center before and on the hour of nine o'clock in the morning on the day the examination is to occur, and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after a seven-day period has expired, the vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks shall be sealed for one year: Provided, however, That the vote recording devices and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed, and any of the electronic voting equipment herein discussed may be released for inspection or review by a request of a circuit court or the supreme court of appeals.

(2) In canvassing the returns of the election, the board of canvassers shall examine all of the vote recording devices, the ballot labels, ballot cards and the automatic tabulating equipment used in such election and shall determine the number of votes cast for each candidate and for and against each question and by such examination shall procure the correct returns and ascertain the true results of the election.
Any candidate or his party representative may be present at such examination.

(3) If any candidate shall demand a recount of the votes cast at an election, the ballots and ballot cards shall be reexamined during such recount for the purpose of reascertaining the total number of votes cast for any candidate in the same manner and according to the same rules as are utilized in the original vote count pursuant to section twenty-seven of this article.

(4) During the canvass and any requested recount, at least five percent of the precincts shall be chosen at random and the ballot cards cast therein counted manually. The same random selection shall also be counted by the automatic tabulating equipment. If the variance between the random manual count and the automatic tabulating equipment count of the same random ballots, is equal to or greater than one percent, then a manual recount of all ballot cards shall be required. In the course of any recount, if a candidate for an office shall so demand, or if the board of canvassers shall so elect to recount the votes cast for an office, the votes cast for that office in any precinct shall be recounted by manual count.

§3-4A-33. Tampering with vote recording devices, ballot labels, ballot or ballot cards, program decks, standard validation test decks, or other automatic tabulating equipment; other dishonest practices; attempts; penalty.

Any person not an election officer or other public official who shall tamper or attempt to tamper with any vote recording device, ballot label, ballot or ballot card, program deck, standard validation test deck, or automatic tabulating equipment, or in any way intentionally impair or attempt to impair, their use, and any person who shall be guilty of or shall attempt any dishonest practice upon any such devices or equipment, or with or by their use, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for not less than one year nor more than ten years, or fined not less than five thousand dollars or both.

Any clerk of a county commission, county commissioner, ballot commissioner, election commissioner, or poll clerk, or any custodian, technician, or other public official authorized to take part in the holding of an election or in preparing for an
election, who, with intent to cause or permit any vote recording device, program deck, standard validation test deck, or other automatic tabulating equipment to fail to record, test or tabulate correctly all votes cast thereon or tabulated therewith, tampers with or disarranges such device in any way, or any part or appliance thereof, or who causes or consents to the use of such device or equipment for vote recording, testing or tabulating at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted so that it will correctly record, test or tabulate all votes cast, or who, with the purpose of defrauding or deceiving any voter or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear on said device or devices that the votes cast for one ticket, candidate or proposition, were cast for another ticket, candidate or proposition, removes, changes or mutilates any ballot, ballot card or ballot label on said device or any part thereof, or does any other thing intended to interfere with the validity or accuracy of the election, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one year nor more than ten years, or fined not less than five thousand dollars, or both.

CHAPTER 61
(H. B. 1290—By Mr. Shaffer)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six of said chapter, relating to requiring primary and general election ballots to contain language explaining prohibitions on the number of delegates of the House of Delegates who may be elected from any single county in a multi-county delegate district; and requiring the county of residence of each candidate for the House of Delegates in a
multi-county delegate district to be printed on primary and
general election ballots.

Be it enacted by the Legislature of West Virginia:

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

Article
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-13. Form and contents of ballots.

1. The official primary ballot shall contain at the left of
each column of names of candidates, a perpendicular column,
and shall be so printed as to leave a square at the left of
each name on the ballot.

5. On such primary ballot, the names of candidates for president
of the United States, for United States senator and for repre-
sentative in Congress, shall be placed in the first column of can-
didates; the names and county of residence of candidates for all
state offices, including the names and county of residence of
candidates for the state Senate and including the names of can-
didates for the House of Delegates, which shall immediately
follow the names of candidates for the state Senate, and all
other offices to be filled by the voters of a political division
greater than a county, including the state executive committee,
shall be placed in the second column; the names of all candi-
dates for county offices, congressional, senatorial and delegate
district executive committees, shall be placed in the third
column; the names of all candidates for office in the
magisterial districts shall be placed in the fourth column;
and the names of all candidates for delegates to the national
convention of the party shall be placed in the fifth column
and in counties using voting machines the names of all
candidates for delegates to the national convention of the
party shall be placed after the names of all other candidates
for all of the other above specified offices.
In those delegate districts set forth in subsection (d), section two, article two, chapter one of this code which embrace more than one county and in which there is a prohibition regarding the number of delegates to be elected or appointed who are residents of any single county within the district, there shall be printed on the ballot, including, but not limited to, voting machines and electronic voting system ballots, in bold type, immediately preceding the names of candidates for the House of Delegates, a clear explanation of such prohibition. In those delegate districts which embrace more than one county, the county of residence of each candidate for the House of Delegates shall be printed beneath the name of each such candidate on the ballot, including, but not limited to, voting machines and electronic voting system ballots.

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

The secretary of state, or the circuit court clerk, as the case may be, shall arrange the names of the candidates to be printed on the ballot in alphabetical order, according to the surname, under the title of the respective offices upon the ballot.

A separate ballot, in connection with a primary election, for the election of members of county board of education, shall be printed in bold type, under the caption, “Nonpartisan Ballot of Election of Members of the _______ County Board of Education.” The names of the candidates for election to the county board of education, and the number of candidates for which each voter is entitled to vote shall be printed beneath the caption, without reference to political party affiliation, and without designation as to a particular term of office.

In printing each set of ballots the position of the names of the candidates shall be changed in each office division as many times as there are candidates in that office division. As nearly as possible an equal number of ballots shall be printed after each change. In making the change of position, the printer shall take the line of type containing the first
name in the office division concerned and place it at the bottom of the list of names in that division and move up the column so that the name that before was second shall be first after the change. After the ballots are printed they shall be kept in separate piles, one pile for each change in position, and shall then be gathered by taking one from each pile. Sample ballots shall be in the same form as the official ballots, but the order of the names thereon need not be alternated.

All ballots used in primary elections shall be printed on paper conforming as nearly as practicable in weight and texture, to the samples furnished by the secretary of state, but shall not be printed on the same color paper, and the paper shall be sufficiently thick so that the printing cannot be discernible from the back. On the back of the ballot shall be printed in black ink, and in plain, legible, black face pica type, the name of the political party as contained in the heading or "Nonpartisan Board of Education," as the case may be, followed by the word "ballot." Under this designation shall be printed two blank lines followed by the words "poll clerks."

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

All ballots prepared under the provisions of this article shall be printed in black ink on number two white book paper sufficiently thick so that the printing cannot be distinguished from the back, and shall contain the names of every candidate whose nomination for any office to be voted for at the election has been certified and filed according to law, and no others, except that if it shall appear to the satisfaction of the ballot commissioners that a person has been legally nominated as a candidate for an office and is lawfully entitled to have his name upon the ballot and no certificate of the nomination has been received by the clerk of the circuit court, they shall print the name of such candidate upon the ballot in its proper place.

The tickets, except the heading, which shall be in display type, shall be printed in eight point type; the name or
designations of the office and the residence and county of residence of the candidate in lower case letters, and the name of the candidate in capital letters. The name and residence of the candidate may be printed in the same line. The name of each candidate shall be printed in a space defined by ruled lines, and with a black square on its left enclosed by heavy dark lines. If, upon any ticket, there be no candidate or candidates for a designated office, a blank space equal to the space that would be occupied by such name or names, if they were printed thereon, with the blank space herein provided for, shall be left. The heading of each party ticket including the name of the party and the device or emblem above and the large circle between the device or emblem and such name, shall be separated from the rest of the ticket by heavy lines and the circle above the name of the party in which the voter is to place the cross mark, if he desires to vote the straight ticket, shall be defined by heavier lines than the lines defining the blank spaces before the name of candidates, and such circle shall be surrounded by the following words printed in heavy face six point type: “For a straight ticket mark within this circle.” Each party ticket shall be separated from other party tickets and bordered on either side by a heavy border, or a broad solid line, at least one sixteenth of an inch wide, and the edges of the ballot on either side trimmed off to within one-half inch of the border or solid line described.

The names of the candidates shall be arranged on the ballot in tickets or lists, in separate columns under the respective party or political or other designation certified, each column or ticket containing the names of candidates nominated by the same political party and no others. In elections for presidential electors, the names of candidates for electors of any political party or group of petitioners, shall not be placed on the ballot, but shall, after nomination, be filed with the secretary of state. In place of their names, there shall be printed first on the ballots the names of the candidates for president and vice president, respectively, of each such party or group of petitioners, and they shall be arranged under the title of the office. Before the names of such candidates for president and vice president of each
party, or group, a single square shall be printed, in front of a brace in which the voter shall place the cross mark for the candidate of his choice for such offices. A vote for any of such candidates shall be a vote for the electors of the party by which such candidates were named, and whose names have been filed with the secretary of state.

The names of the candidates on each ticket shall be arranged in groups, with a heading over each group printed in heavy faced eight point type to indicate the political divisions in which such group is to be voted for. The arrangement of the ballot shall conform as nearly as practicable to the plan here given:

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<td><img src="image2" alt="Democratic Ticket" /></td>
<td><img src="image3" alt="Prohibition Ticket" /></td>
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The tickets of the several political parties shall be printed on the ballot in parallel columns, each ticket in a separate column headed by the chosen device, and the tickets in such order on the ballot and the names of the office in such order on the ticket as the secretary of state shall direct, preference, however, being given to the political party which cast the highest number of votes for the head of the ticket at the last preceding presidential election, and so on. No ticket or list of candidates shall be printed under the name of any party containing more candidates for any office than are to be elected.

In those delegate districts set forth in subsection (d), section two, article two, chapter one of this code which embrace more than one county and in which there is a prohibition regarding the number of delegates to be elected or appointed who are residents of any single county within the district, there shall be printed on the ballot, including, but not limited to, voting machines and electronic voting system ballots, in bold type, immediately preceding the names of candidates for the House of Delegates, a clear explanation of such prohibition. In those delegate districts which embrace more than one county, the county of residence of each candidate for the House of Delegates shall be printed beneath the name of each such candidate on the ballot, including, but not limited to, voting machines and electronic voting system ballots.

The ballot shall be so printed as to give each voter a clear opportunity to designate by a cross mark in a large, blank, circular space, three quarters of an inch in diameter, below the device and above the name of the party at the head of the ticket or list of candidates, his choice of a party ticket and desire to vote for each and every candidate thereon; and by a cross mark, in a blank, enclosed space on the left side and before the name of each candidate, his choice of particular candidates.

For any office or offices for which there is to be more than one candidate elected, that section of the ballot relating to said office shall be printed in such a manner so as to provide for the rotation of names in order to assure that
each candidate from each party for said office is opposite the name of each candidate for said office from the other party or parties on the ballot an equal number of times. If any party fails to nominate or to fill a ballot vacancy for as many candidates as there are persons to be elected to said office, then the ballot shall be printed in such a manner so as to provide that the space created by the vacancy shall be opposite the names of each of the candidates for said office from the other party or parties an equal number of times.

On the back of the ballot shall be printed or stamped in black ink the words “Official Ballot,” with the date of the election, and underneath shall be two blank lines, followed by the words “Poll Clerks.”

CHAPTER 62
(H. B. 1953—By Mr. Albright and Mr. Kopp)
[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-e, relating to pre-candidacy financing and expenditures.

Be it enacted by the Legislature of West Virginia:

That article eight, chapter 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 five-e, to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.
§3-8-5e. Pre-candidacy financing and expenditures.

(a) Notwithstanding any other provision of this code, it shall be lawful for a person, otherwise qualified to be a candidate for any public office or position to be determined by public election, to receive contributions or make expenditures, or
both, personally or by another individual acting as a treasurer or financial agent, to determine the advisability of becoming such a candidate or preparing to be such a candidate:

Provided, That such contributions may be received and such expenditures made only during the four years immediately preceding the term for which such person may be a candidate or during the term of office immediately preceding the term for which such person may be a candidate, whichever is less:

Provided, however, That no person shall be disqualified from receiving contributions or making expenditures as permitted under the provisions of this section solely because such person then holds a public office or position.

(b) Any person undertaking to determine the advisability of becoming or preparing to be a candidate, who desires to receive contributions before filing a certificate of candidacy, shall name himself or another individual to act as a treasurer or financial agent and shall file a designation of financial agent in the manner provided in section four of this article before receiving any contributions permitted by this section. Any expenditures made before the filing of a designation of financial agent shall be reported in accordance with the provisions of this section, regardless of the source of funds used for such expenditures.

(c) A person who receives a contribution who is acting for and by himself or as treasurer or agent for another pursuant to the provisions of this section shall keep detailed accounts of every sum of money or other thing of value received by him, and of all expenditures and disbursements made, and liabilities incurred, in the same manner as such accounts are required by section five of this article, for the period prior to the date of filing for candidacy for the office he is considering seeking. Any such person who has received contributions or made expenditures subject to the provisions of this section shall file annually on the last Saturday in March, and also on the last Saturday in March or within fifteen days thereafter next preceding the election at which the names of candidates would appear on the ballot for the public office or position which the person originally considered seeking, a detailed itemized statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth all contributions re-
received and expenditures made pursuant to the provisions of this section concerning the candidacy of that person. If the person on whose behalf such contributions are received or expenditures are made becomes a candidate for any office or position to be decided at such election then the itemized statement shall be included within the first statement required to be filed by the provisions of section five of this article. If such person does not become a candidate for any office or position to be decided at such election, then the detailed itemized statement required by this subsection shall be the only statement required to be filed by such person. Regardless of whether such person becomes a candidate as originally intended, or becomes a candidate for some office other than the office or position originally intended, or does not become a candidate, all limits on campaign contributions and campaign expenditures applicable to the candidacy of or advocacy of the candidacy of such person for the office he actually seeks, shall be applicable to and inclusive of the receipts had and expenditures made during such pre-candidacy period as well as after the person becomes a candidate.

CHAPTER 63

(Com. Sub. for H. B. 1849—By Mr. Speaker, Mr. See)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article six of said chapter; to further amend said article six by adding thereto a new section, designated section sixteen; to amend and reenact section one, article six-a of said chapter; to amend and reenact sections two and eleven, article ten of said chapter; and to further amend said article ten by adding thereto three new sections, designated sections nineteen, twenty and twenty-one, all relating to employment security generally; establishing a minimum contribution for certain employers; extending to the last day of September, one thousand
nine hundred eighty-one, as the time during which certain delinquent contributions from certain employers may be made without additional penalty; employee eligibility and benefits; employees receiving federal employment supplement; deduction of child support; extended benefit program; when benefits begin; assignment of benefits prohibited; exemption from process; disclosure of information to child support agencies; disclosure to food stamp agencies; and recovery of benefits paid in error.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-5. Rate of contribution.

§21A-5-5. Rate of contribution.

1 On or after January first, one thousand nine hundred forty-one, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths percent of wages paid by him with respect to employment during each calendar year beginning with the calendar year one thousand nine hundred forty-one, subject, however, to other provisions of this article; except that on and after January first, one thousand nine hundred seventy-two, each employer subject to this chapter shall pay contributions at the rate of one
and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

On and after July one, one thousand nine hundred eighty-one, each employer subject to this chapter shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article.

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred seventy-eight, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of two and seven-tenths percent of wages paid by him with respect to employment during each calendar year.

Notwithstanding any other provision of this chapter to the contrary, on or after the first day of July, one thousand nine hundred eighty-one, any foreign corporation or business entity engaged in the construction trades shall pay contributions at the rate of seven and five-tenths percent of wages paid by him with respect to employment during each calendar year until he has been an employer for not less than thirty-six consecutive months ending on the computation date; thereafter, his contribution rate shall be determined in accordance with the provisions of section ten of this article: Provided, That any corporation or business entity engaged in the construction trades shall make payments to the fund at the rates applicable to such employer as of January first, one thousand nine hundred eighty-one, for wages paid with respect to employment on construction contracts entered into for which bids are submitted in this state prior to April fifteenth, one thousand nine hundred eighty-one: Provided, however, That beginning the first day of January one, one thousand nine hundred eighty-two, and any calendar year thereafter, the rate which applies to such
corporation or business entity, shall not be less than two and
seven-tenths percent of such wages, unless such corporation or
business entity elects to have its rate of contribution determined
in accordance with the provisions of section ten of this
article: Provided further, That the burden shall be on such
corporation or business entity to prove that any such contract
was executed or that any such bid was submitted therefor
prior to April fifteenth, one thousand nine hundred eighty-
one.


(1) The commissioner shall maintain a separate account for
each employer, and shall credit his account with all con-
tributions paid by him prior to July first, one thousand nine
hundred sixty-one. On and after July first, one thousand
nine hundred sixty-one, the commissioner shall maintain a
separate account for each employer, and shall credit said
employer's account with all contributions of such employer
in excess of seven tenths of one percent of taxable wages;
and on and after July first, one thousand nine hundred seventy-
one, the commissioner shall maintain a separate account for
each employer, and shall credit said employer's account with all
contributions of such employer in excess of four tenths of one
percent of taxable wages: Provided. That any adjustment
made in an employer's account after the computation date
shall not be used in the computation of the balance of an
employer until the next following computation date: Pro-
vided, however, That nothing in this chapter shall be con-
strued to grant an employer or individual in his service prior
claims or rights to the amounts paid by him into the fund,
either on his behalf or on behalf of such individuals. The
account of any employer which has been inactive for a
period of four consecutive calendar years shall be terminated
for all purposes.

(2) Benefits paid to an eligible individual for regular and
extended total or partial unemployment beginning after the
effective date of this article shall be charged to the account
of the last employer with whom he has been employed as
much as thirty working days, whether or not such days are con-
secutive: Provided, That no employer's account shall be
charged with benefits paid to any individual who has been
separated from a noncovered employing unit in which he
was employed as much as thirty days, whether or not such
days are consecutive: Provided, however, That no employer's
account shall be charged with more than fifty percent of the
benefits paid to an eligible individual as extended benefits
under the provisions of article six-a of this chapter: Provided further, That state and local government employers shall
be charged with one hundred percent of the benefits paid
to an eligible individual as extended benefits.

(3) The commissioner shall, for each calendar year here-
after, classify employers in accordance with their actual ex-
perience in the payment of contributions on their own be-
half and with respect to benefits charged against their ac-
counts, with a view of fixing such contribution rates as will
reflect such experiences. For the purpose of fixing such con-
tribution rates for each calendar year, the books of the de-
partment shall be closed on July thirty-one of the pre-
ceding calendar year, and any contributions thereafter paid,
as well as benefits thereafter paid with respect to compensable
weeks ending on or before June thirty of the preceding calendar
year, shall not be taken into account until the next annual
date for fixing contribution rates: Provided, That if an em-
ployer has failed to furnish to the commissioner on or be-
fore July thirty-one of such preceding calendar year the wage
information for all past periods necessary for the computation
of the contribution rate, such employer's rate shall be, if it is
immediately prior to such July thirty-one, less than three and
three-tenths percent, increased to three and three-tenths
percent: Provided, however, That any payment made or any
information necessary for the computation of a reduced rate
furnished on or before the termination of an extension of time
for such payment or reporting of such information granted
pursuant to a regulation of the commissioner authorizing such
extension, shall be taken into account for the purposes of fixing
contribution rates: Provided further, That when the time for
filing any report or making any payment required hereunder
falls on Saturday, Sunday, or a legal holiday, the due date
shall be deemed to be the next succeeding business day: And
provided further, That whenever, through mistake or in-
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70 advertence, erroneous credits or charges are found to have
71 been made to or against the reserved account of any employer,
72 the rate shall be adjusted as of January one of the calendar year
73 in which such mistake or inadvertence is discovered, but
74 payments made under any rate assigned prior to January
75 one of such year shall not be deemed to be erroneously col-
76 
77 (4) The commissioner may prescribe regulations for the
78 establishment, maintenance and dissolution of joint accounts
79 by two or more employers, and shall, in accordance with
80 such regulations and upon application by two or more em-
81 ployers to establish such an account, or to merge their
82 several individual accounts in a joint account, maintain such
83 joint account as if it constituted a single employer's account.
84
85 (5) State and local government employers are hereby
86 authorized to enter into joint accounts and to maintain such
87 joint account or accounts as if it or they constituted a single
88 employer's account or accounts.
89
90 (6) Effective on and after July one, one thousand nine
91 hundred eighty-one, if an employer has failed to furnish to
92 the commissioner on or before August thirty-one of one thou-
93 sand nine hundred eighty, and each year thereafter, with the
94 exception of one thousand nine hundred eighty-one, which
95 due date shall be September thirty, one thousand nine hundred
96 eighty-one, the wage information for all past periods neces-
97 sary for the computation of the contribution rate, such em-
98 ployer's rate shall be, if it is immediately prior to July one,
99 one thousand nine hundred eighty-one, less than seven and
100 five-tenths percent, increased to seven and five-tenths per-
101
ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-4. Individual not denied benefits by receiving vocational training.


§21A-6-4. Individual not denied benefits by receiving vocational training.

1 Notwithstanding any other provision in this article, no
2 individual shall be denied unemployment compensation bene-
3 fits because of his receiving training as part of an area
4 vocational program, or similar program, which has as its
5 object the training of unemployed individuals in new oc-
6 cupational skills: Provided, That such individual's training
7 and training institution are approved by the commissioner,
8 and such individual produces evidence of his continued at-
9 tendance and satisfactory progress at such training institution
10 when requested to do so by the commissioner.

Notwithstanding any other provisions of this chapter, no
12 otherwise eligible individual shall be denied benefits for any
13 week because he or she is in training approved under section
14 236(a)(1) of the Federal Trade Act of 1974, nor shall such
15 individual be denied benefits by reason of leaving work to
16 enter such training, if the work left is not suitable employ-
17 ment, or because of the application of the provisions of this
18 chapter or any applicable federal unemployment compensa-
19 tion law relating to availability for work, active search for work
20 or refusal to work to any such week in training.

For purposes of this section, the term "suitable employ-
22 ment" means with respect to an individual, work of a sub-
23 stantially equal or higher skill level than the individual's past
24 adversely affected employment as defined for purposes of
25 the Federal Trade Act of 1974 and wages for such work
26 at not less than eighty percent of the individual's average
27 weekly wage as determined for the purposes of the Federal

1 (a) An individual filing a new claim for unemployment
2 compensation shall, at the time of filing such claim, dis-
3 close whether or not the individual owes child support ob-
4 ligations as hereafter defined under subsection (g). If any
5 such individual discloses that he or she owes child support
6 obligations and is determined to be eligible for unemploy-
7 ment compensation, the commissioner shall notify the de-
8 partment of welfare that the individual has been determined
9 to be eligible for unemployment compensation.

10 (b) The commissioner shall deduct and withhold from
11 any unemployment compensation payable to an individual
that owes such child support obligations as defined under subsection (g):

(1) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither subdivision (2) nor subdivision (3) is applicable; or

(2) The amount, if any, determined pursuant to an agreement submitted to the commissioner under section 454(20)(B)(i) of the Social Security Act by the department of welfare, unless subdivision (3) is applicable; or

(3) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the commissioner.

(c) Any amount deducted and withheld under subsection (b) shall be paid by the commissioner to the department of welfare.

(d) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the department of welfare in satisfaction of the individual's child support obligations.

(e) For purposes of subsections (a) through (d), the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the department of welfare for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(g) The term "child support obligations" means, for
purposes of these provisions, only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


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

1. "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period. Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefit period may become effective in this state prior to the sixty-first day following the date of enactment of the Federal-State Extended Unemployment Compensation Act of 1970, and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and state "off" indicator, respectively.

(2) There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:
(A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) Equaled or exceeded five percent.

(3) There is a "state 'off' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(A) Was less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or

(B) Was less than five percent.

(4) "Rate of insured unemployment," for purposes of subdivisions (2) and (3) of this section, means the percentage derived by dividing

(A) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor by

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(5) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(6) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an in-
individual under the provisions of this article for weeks of
unemployment in his eligibility period.

(7) "Eligibility period" of an individual means the period
consisting of the weeks in his benefit year which begin in
an extended benefit period and, if his benefit year ends within
such extended benefit period, any weeks thereafter which be-
gin in such period.

(8) "Exhaustee" means an individual who, with respect
to any week of unemployment in his eligibility period:

(A) Has received, prior to such week, all of the regular
benefits which were available to him under this chapter or
any other state law (including dependents' allowances and
benefits payable to federal civilian employees and ex-servicemen
under 5 U.S.C., chapter 85) in his current benefit year that
includes such week: Provided, That for the purposes of this
subdivision, an individual shall be deemed to have received
all of the regular benefits which were available to him al-
though (i) as a result of a pending appeal with respect
to wages and/or employment which were not considered
in the original monetary determination in his benefit year,
he may subsequently be determined to be entitled to added
regular benefits, or (ii) he may be entitled to regular benefits
with respect to future weeks of unemployment, but such
benefits are not payable with respect to such week of un-
employment by reason of the provisions of section one-a,
article six of this chapter; or

(B) His benefit year having expired prior to such week,
has no, or insufficient, wages and/or employment on the
basis of which he could establish a new benefit year which
would include such week; and

(C) Has no right to unemployment benefits or allowances,
as the case may be, under the Railroad Unemployment In-
urance Act, the Trade Expansion Act of 1962, the Auto-
motive Products Trade Act of 1965 and such other federal
laws as are specified in regulations issued by the United
States secretary of labor; and has not received and is not
seeking unemployment benefits under the unemployment com-
pensation law of the Virgin Islands or of Canada; but if
he is seeking such benefits and the appropriate agency finally
determines that he is not entitled to benefits under such law
he is considered an exhaustee.

(9) “State law” means the unemployment insurance law
of any state, approved by the United States secretary of
labor under section 3304 of the Internal Revenue Code of
1954.

(10) No individual shall be entitled to extended benefits
during a period of unemployment if he was disqualified under
the provisions of subdivision (1), (2) or (3), section
three, article six of this chapter, which disqualification shall
not be terminated until such individual has returned to
covered employment and has been employed in covered em-
ployment for at least thirty working days.

(11) (A) Notwithstanding any other provisions of this
section, an individual shall be ineligible for payment of ex-
tended benefits for any week of unemployment in his eligibility
period if the commissioner finds that during such period:

(i) He failed to accept any offer of suitable work or failed
to apply for any suitable work (as defined under subdivision
(11) (C) of this section, to which he was referred by the
commissioner; or

(ii) He failed to actively engage in seeking work as
prescribed under subdivision (11) (E).

(B) Any individual who has been found ineligible for
extended benefits by reason of the provisions in subdivision
(11) (A) of this section shall also be denied benefits be-
inning with the first day of the week following the week
in which such failure occurred and until he has been em-
ployed in each of four subsequent weeks (whether or not
consecutive) and has earned remuneration equal to not less
than four times the extended weekly benefit amount;

(C) For purposes of this subdivision (11) (A) (i) of this
section, the term “suitable work” means, with respect to any
individual, any work which is within such individual’s capa-
bilities: Provided, however, That the gross average weekly
remuneration payable for the work must exceed the sum of:
(i) The individual's average weekly benefit amount (as determined under subdivision (11) (D) of this section) plus;

(ii) The amount, if any, of supplemental unemployment benefits (as defined in section 501 (c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

(iii) Pays wages equal to the higher of:

(I) The minimum wages provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(II) The state or local minimum wage;

(iv) Provided that no individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability as described above if:

(I) The position was not offered to such individual in writing and was not listed with the employment service; or

(II) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section five, article six of this chapter, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision (11) (C) of this section; or

(III) The individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section five, article six of this chapter, without regard to the definition specified by subdivision (11) (C) of this section.

(D) Notwithstanding the provisions of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal
Revenue Code of 1954 and set forth herein under subdivision (11) (C) (iii) (I) of this section.

(E) For the purposes of subdivision (11) (A) (ii) of this section an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this article to any suitable work which meets the criteria prescribed in subdivision (11) (C).

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(12) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(13) An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that he has been paid wages by an employer who was subject to the
provisions of this chapter during the base period of his current benefit year in an amount at least equal to forty times his benefit rate for total unemployment.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-2. Assignment of benefits invalid; exemption from process; exception.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.


§21A-10-2. Assignment of benefits invalid; exemption from process; exception.

An assignment, pledge or encumbrance of any benefit due or payable under this chapter shall be invalid. Right to benefits shall be exempt from levy, execution, attachment, or other processes for the collection of debt. Benefits received by an individual so long as they are not mingled with other funds of the recipient, shall be exempt from process for the collection of a debt. The waiver of any exemption provided in this section shall be void: Provided, That the provisions of this section shall not apply to the assignment or collection of child support payments under the provisions of section sixteen, article six of this chapter.

Collection of debts incurred for necessaries furnished to an individual, his spouse, or dependents, during a period of unemployment shall be exempt from the operation of the above provision.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.

The commissioner may require an employing unit to provide sworn or unsworn reports concerning:

(1) The number of individuals in its employ.

(2) Individually their hours of labor.

(3) Individually the rate and amount of wages.
(4) Such other information as is reasonably connected with the administration of this chapter.

Information thus obtained shall not be published or be open to public inspection so as to reveal the identity of the employing unit of the individual, with the exception of information furnished to the department of welfare as required under the provisions of section sixteen, article six of this chapter, and information furnished to the United States department of agriculture. However, a claimant of benefit or any other interested party shall, upon request, be supplied with information from such records to the extent necessary for the proper presentation or defense of a claim. Such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

A person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned not longer than ninety days, or both.

No action for slander or libel, either criminal or civil, shall be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.


(1) The department of employment security shall disclose, upon request, to officers or employees of any state or local child support enforcement agency, any wage information with respect to an identified individual which is contained in its records.

The term "state or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan described in section 454 of the Social Security Act, which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act.

(2) The requesting agency shall agree that such information
is to be used only for the purpose of establishing and collect-
ing child support obligations from, and locating, individuals
owing such obligations which are being enforced pursuant to
a plan described in section 454 of the Social Security Act
which has been approved by the secretary of health and human
services under Part D, Title IV of the Social Security Act.

(3) The information shall not be released unless the re-
questing agency agrees to reimburse the costs involved for fur-
nishing such information.

(4) In addition to the requirements of this section, all other
requirements with respect to confidentiality of information ob-
tained in the administration of this chapter and the sanctions
imposed on improper disclosure shall apply to the use of such
information by officers and employees of child support agen-
cies.


(1) The department of employment security shall disclose,
upon request, to officers and employees of the United States
department of agriculture and any state food stamp agency,
with respect to an identified individual, any of the following
information which is contained in its records:

(a) Wage information;

(b) Whether the individual is receiving, has received, or
has made application for unemployment compensation and
the amount of any compensation being received or to be re-
ceived by such individual;

(c) The current or most recent home address of the in-
dividual; and

(d) Whether the individual has refused an offer of em-
ployment and if so, a description of the employment offered
and the terms, conditions and rate of pay therefor.

(2) The term “state food stamp agency” means any agency
described in section (3) (n) (1) of the Food Stamp Act of
1977 which administers the food stamp program established
under such act.

(3) The requesting agency shall agree that such informa-
tion shall be used only for purposes of determining the applicant's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed for improper disclosure of information obtained in the administration of this chapter shall apply to the use of such information by the officers and employees of any food stamp agency or the United States department of agriculture.


A person who, by reason of departmental error, irrespective of the nature of said error, has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past due payment: Provided, That such collection or deduction of benefits shall be barred after the expiration of two years.

CHAPTER 64

(S. B. 445—By Mr. Bohmker, Mrs. Checo, Mr. Davis, Mr. Jones and Mr. White)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]
article three; article four; article five; sections two and three, article seven; section eight, article eight; sections one-a, five, six and seven, article nine; sections eight and fifteen, article ten; sections eight and nine, article fifteen, all of chapter forty-four; to further amend said chapter by adding thereto a new article, designated article three-a; to amend and reenact section four, article ten, chapter fifty-six; and to amend and reenact section nine, article one, chapter fifty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to abolishing commissioners of accounts; creating fiduciary commissioners and providing for their powers and duties; changing references to commissioners of accounts to fiduciary commissioners; changing references to county courts to county commissions; allowing county clerk to designate one or more assistants as responsible for probate matters; requiring appraisements to be filed in quadruplicate; providing for a system of unsupervised administrators upon the filing of an appraisement, affidavit, statement of receipts and disbursements and statement of proposed distribution; requiring supervision in certain cases; providing for actual notice to beneficiaries and to the tax commissioner; requiring notice by publication; providing for filing fees; establishing a special revenue account for the purpose of reviewing appraisements; requiring the tax commissioner to act within sixty days of the date of notice to release his lien for taxes or request supervision; requiring confirmation by the county commission of the final distribution; allowing bona fide purchaser of real estate without notice of any claim to take clear title; providing for waiver of right to request supervision if not made within sixty days of the date of notice; eliminating certain references to trustees; reducing time periods for payment of creditors, claims and legacies; reducing time periods in which personal representative may be held responsible; reducing time periods for personal representative to report to fiduciary commissioner; deleting references to inventories; deleting references to record of fiduciaries in the office of the clerk of the county commission; requiring county commissions to establish fee schedules or rates of compensation which fiduciary commissioners may charge; requiring county commissions to review all fees according to certain standards; relating to the administration of estates and trusts generally; procedures relating to the estates of persons confined in penitentiaries; providing for the duties
of fiduciary commissioners; procedures relating to the assignment by certain insolvents for the benefit of creditors; providing for the reference of such insolvents' estates to fiduciary commissioners; providing a short title by which the provisions of said chapter forty-four may be known and cited; providing generally for the persons to whom the provisions of said chapter shall apply; providing for certain rules of construction with respect to said chapter and certain rules with respect to the interpretation of references to the provisions of said chapter; requiring that all persons acting in a personal representative or fiduciary capacity qualify as such upon the showing of their need and entitlement to be so appointed; restricting the power of persons appointed as executor of a will to serve as such until the qualification and permitting such persons to perform such limited functions prior to such qualification; providing for administrators cum testamento annexo and their qualification, oath and bond; the appointment of administrator for the administration of the estates of intestate decedents; providing for certain preferences with respect to the person to be appointed as such and for the persons who may be appointed; the appointment of a curator during periods of contest or prior to the qualification and appointment of an executor or administrator and establishing the duties of such curator; requiring such curators to account for the estate coming into their hands upon the qualification of any such executor or administrator; requiring that persons to whom letters of testamentary are granted as administrators give bond and take an oath and the content of such oath; providing for the termination of the appointment of a creditor or other person as administrator if a distributee requests appointment as such; the penal sum and form of the bond to be given by executors and administrators and for the removal of such person as personal representative for failure to post bond in sufficient penal sum; providing for certain exceptions with respect to persons required to post such bond; providing for administrator de bonis non in cases of the death, resignation or removal of any executor or administrator cum testamento annexo; providing that marriage of a woman who is a personal representative shall not extinguish her authority to act in such capacity; the authority of the sheriff to serve as administrator in certain cases; requiring such sheriff to make certain reports to the county commission with respect thereto; requiring the sheriff in such cases to account for all moneys and property
which remain unadministered at the end of his term; providing for certain penalties against such sheriff with respect to his failure to report or make such settlements at the time prescribed; removal of personal representative for cause by petition to the county commission and providing for hearing with respect thereto; providing for the issuance of letters testamentary or letters of administration and the effect thereof; providing for the affidavit by the executor or administrator at the time of qualification of heirs, distributees, devisees and legatees; the appraisal of estates and its form and content and providing for certain rules with respect thereto; the duty of the personal representative to administer all personal property coming into his hands; providing for cases in which administrator de bonis non may administer assets for which his predecessor personal representative was liable; providing for the delivery of all assets remaining in the hands of the predecessor personal representative to the administrator de bonis non and the accounting for such assets; the allowance of food and fuel for the family of any decedent and for the consumption thereof for such family; limiting the right of a personal representative to sell estate assets in certain cases and requiring the sale of such assets when the value thereof is likely to be impaired; permitting the sale of assets for the payment of certain funeral expenses, administration costs, debts, legacies in certain cases; requiring administration of assets subject to a life estate per autre vie; permitting a personal representative to sue or be sued with respect to certain claims against his decedent and in cases relating to the taking of any goods or assets of the estate or for the waste, damage or destruction thereof; permitting a personal representative to have execution or other process for the enforcement of a judgment either in his favor or in the favor of his decedent; permitting actions to be maintained against the surety of any personal representative if judgments against him are returned unsatisfied; providing that the personal representative and his surety shall not be liable for any amount beyond the assets coming into the hands of the personal representative in certain cases; providing for the payment of certain wages, pensions or other moneys due a deceased person in certain cases and the discharge of the employer for the payment thereof; creating the office of fiduciary supervisor in each county and the office of fiduciary commissioner and providing for the nature of their respective offices and the
relationship of such offices to the county commission; the
general powers and duties of the fiduciary supervisor;
providing for the salary of such fiduciary supervisor; providing
for the qualification of such fiduciary supervisor; providing
for a test to be given under the authority of the state tax
commissioner with respect thereto; providing that the
fiduciary supervisor shall have general supervision of all
fiduciary matters and of all fiduciary commissioners; limiting
the right of the fiduciary supervisor or any of his deputies or
employees to engage in the practice of law; providing for a
penalty for persons who practice law in violation of such
prohibition; providing for the proof and allowance of claims
against the estate of the decedent; the notice to creditors for
the filing of claims against such estates and the content of such
notice; reference of disputed claims to fiduciary
commissioners and the limitation upon such reference;
requiring that claims be proven by vouchers and affidavits and
that when so proven such claims are taken as proved unless
objected to in whole or in part by filing thereto; providing for
hearings with respect to objected or disputed claims;
providing for the payment of funeral expenses; permitting the
presentation of claims prior to publication of the aforesaid
notice; establishing procedures for the payment of contingent
or unliquidated claims and the proof thereof; the continuance
of hearings upon all claims by the fiduciary supervisor;
providing for off-sets against any claim made against a
decedent's estate; protection by heirs or devisees against liens
on real property which has descended or has been devised to
them; providing for the disallowance of claims barred by
statute of limitations and the manner of tolling such statutes
with respect to claims against decedents' estates; permitting
the payment in advance of certain claims made against a
decedent's estate; providing that personal representatives are
not precluded from instituting actions for the collection and
recovery of debts or claims and permitting off-sets and
counterclaims in such actions; providing for the report of
claims of creditors by fiduciary commissioners and fiduciary
supervisors and upon the assets and shares of distributees and
legatees; providing for the apportionment of federal estate
taxes and the limitations and procedures relating thereto;
establishing procedures for summary settlements before
fiduciary supervisors and certain findings required to be made
with respect thereto; requiring that certain notices be given
with respect thereto and that certain hearings be had with respect to disputed matters relating to such summary settlements; the final settlement of estates through such summary procedure; providing for the payment of contingent and unliquidated claims and claims that have not matured; providing for the taking of exceptions to the report of the fiduciary supervisor or fiduciary commissioner and for hearings with respect to such exceptions and for certain findings upon such hearings; the confirmation of such findings by the county commission and the effect of such confirmation; appeals from such orders of confirmation to the circuit court; permitting the reference of matters subject to exception to fiduciary commissioners and the authority of the fiduciary commissioners with respect thereto; providing for a report of claims and for an abbreviated form thereof in certain cases; requiring the recordation of reports of claims in the office of the clerk of the county commission; providing for an order of preference with respect to the payment of certain claims and the order of payment of claims within a certain classification and establishing procedures for the payment of claims on a ratable basis; establishing certain limitations upon the liability of personal representatives with respect to funds distributed by him; establishing times when claims and legacies may be paid and distributed; providing procedures for the accounting of moneys not disposed of and distributed at time of settlement and procedures for the subsequent payment and distribution of such moneys; providing that a personal representative may not be compelled to make distribution until one year from the date of his qualification and establishing certain limitations with respect thereto; limiting the right of claimants or creditors for payments from the personal representative when claims are not timely presented or proved; establishing procedures for the maintaining of actions against distributees and legatees; limiting the right of enforcement of liens with respect to secured claims which have become barred; establishing the number of fiduciary commissioners in each county and their general powers and duties; authorizing special fiduciary commissioners in certain cases and the appointment of successor fiduciary commissioners upon the resignation or removal of any existing commissioner; providing that matters heretofore referred to commissioners of accounts shall remain with such commissioners of accounts, who shall become special
fiduciary commissioners and providing that matters heretofore referred to such persons shall remain with them until concluded or otherwise recalled for cause; requiring the inspection by fiduciary commissioners of all inventories, appraisements and accounts of sale returned to him; requiring such commissioners to distribute or deliver copies thereof to those persons required by law to receive them; providing a penalty for the failure of such fiduciary commissioners in the event of failure or refusal to do so; requiring that fiduciary commissioners periodically determine the existence and sufficiency of any bond required to be posted by any person with respect to matters referred to him in certain cases and procedures for requiring the posting of and requiring fiduciary supervisors to perform such duties in certain cases; the reference of matters to fiduciary commissioners by the county commission; establishing rules of procedure before such fiduciary commissioners; establishing a method by which fees are to be charged by fiduciary commissioners and fiduciary supervisors and the disposition of such fees; establishing the amount of such fees in certain cases; requiring itemized vouchers for the payment of such fees and the approval thereof by the county commission; establishing a county fiduciary fund; providing for the payment of certain moneys into such fund and for its disposition; requiring county commissioners to give certain annual reports to the Legislature with respect to the costs of administering estates within the several counties; providing for certain general rules applicable to the reference of estates to fiduciary supervisors and fiduciary commissioners; providing separate rules for counties having tribunals for police and fiscal purposes; establishing procedures for the accounting by personal representative and the filing of inventories by such personal representatives; providing the appraisals filed in the case of decedents' estates are to be deemed to be such inventories; authorizing the fiduciary supervisor to compel compliance with section; requiring the accounting of the proceeds of sales by personal representatives; requiring the recordation of all inventories, appraisals and reports of sale and accounting thereon; requiring personal representatives to exhibit the account for final settlement and the time during which such settlements are to be made; procedures to compel compliance with respect to the exhibiting of inventories, appraisals, accounts and
settlements are due and providing that personal representatives of certain estates need not account but once every three years; requiring the examination for sufficiency of bond required at time of examination; procedures for the annual settlement of account and objections thereto and providing that failure to do so may result in forfeiture of commission unless the same be allowed by county commission; procedures to compel accounting by personal representatives by any interested person; requiring the publication of monthly notices with respect to proposed settlement of every personal representative; the authority of the fiduciary supervisor or fiduciary commissioner to compel exhibiting of securities, moneys or other documents at the time of accounting; authority of such supervisor or commissioner to petition the circuit court for order to compel compliance; the liability of personal representatives with respect to any loss to his estate through his negligence or improper conduct; the compensation and expenses of personal representatives and the reimbursement of such expenses; requiring fiduciary supervisors, fiduciary commissioners or commissioners in chancery to deliver receipts for all vouchers filed with him; reports of fiduciary supervisor or fiduciary commissioners with respect to accountings and objections thereto and requiring the filing of such reports; the examination of such reports by the county commission or circuit court and providing for the collection or the recommittal of such report if found necessary; the confirmation of such reports and the effect thereof and the manner in which such reports are made conclusive; authorizing the county commission or circuit court to direct the investment of funds in cases where the same appears to be proper; the disbursement of the balance of accounts after settlement and actions to compel such disbursements; the final report of the personal representative following such disbursement and the content thereof; the duty of the clerk of the circuit court to report to the fiduciary supervisor as to any final orders entered in actions to compel settlement and the content of such report and the penalties for failure to make such report and to properly record the same; requiring the clerk of the county commission to maintain a record of fiduciaries and the matters required to be kept in such record; procedures relating to the appointment on nonresidents as personal representatives or guardians and when bond shall be required of such person; upon whom
service of notice and process may be had in cases of appointment of nonresident personal representatives or guardians and the manner of obtaining such service; constituting the clerk of the county commission as attorney-in-fact for such nonresident personal representatives and guardians; prohibiting certain persons from serving as surety upon the bond of personal representatives; prescribing certain rules for the giving of additional bond and when a new or additional bond may be required; the revoking of the authority of a personal representative for failure to give such new or additional surety; the jurisdiction of the county commission to revoke the authority of any personal representative; the authority of personal representatives to compromise certain claims due from or owing to the estate for which they serve; procedures for the compelling of the transfer of securities from a personal representative to his successor; requiring personal representatives to pay the necessary costs in proceedings to compel compliance with provisions of this chapter and the disposition of such costs; clarifying the authority of the clerk of the county commission in certain counties having tribunals for police or fiscal affairs in lieu of county commissions; authorizing the designation of testamentary trustees of beneficiaries of insurance policies and the disposition of such insurance proceeds in such cases; permitting the distribution of assets in satisfaction of pecuniary bequests and the authority of personal representatives to enter into certain agreements with respect thereto; the limitations with respect to such agreements; the authority of personal representatives to enter into agreement with a commissioner of internal revenue of the United States for approval of such agreements in order to maximize appropriate marital deductions, if any, available under the internal revenue law of the United States; permitting personal representatives to invest moneys and assets in their hands and certain procedures relating thereto; specifying the nature and types of securities in which personal representatives may invest estate assets and trust funds; permitting personal representatives to petition the circuit court for authority to invest such funds or assets; the authority of beneficiaries to petition courts for the purpose of instructing personal representatives with respect to investments; petitions to circuit court for the purpose of obtaining authority to retain funds of such trusts for certain contingencies and the notice
required and procedures relating thereto; providing for authority of banks and trust companies to commingle trust funds and certain requirements and limitations relating thereto; requiring an accounting as to such funds held in common and extending authority to cite certain sections of the code as the "Uniform Common Trust Fund Act"; providing for the reenactment of the "Uniform Management of Institutional Funds Act" and providing a short title and the definition of certain terms with respect thereto; rules for the appreciation of assets with respect thereto; the investment authority and delegation of management with respect to such funds; providing certain standards and rules of conduct with respect to the management of such funds; the release of restrictions on the use of and investment of such funds; rules relating to the uniformity of application and to the construction of the provisions of such act; providing certain rules and procedures with respect to the resignation of personal representatives and the petition to be filed with the county commission with respect thereto; the notice or notices to be given with respect to such resignation and to whom such notices are to be given; providing for a petition with respect thereto and its contents; the hearing to be had on such petition and procedures relating thereto; the real estate of decedents and certain procedure relating to the sale of such real estate when required by will; the disposition of the rents or proceeds received upon such real estate or the proceeds of the sale thereof; the disposition of real estate of such decedents when required for the payment of such decedent's debts; the liability of the heirs or devisees of such real estate and the limitation upon the liability of such real estate for such debts; providing for an action to subject real estate to the payments of the debts of the decedent and certain rules with respect thereto; the persons who are to be made parties to any such action; certain rules of evidence with respect to such actions; the jurisdiction of the court hearing such actions; requiring the appointment of a commissioner in chancery or other commissioner for the purpose of ascertaining the liens upon such real estate, the holders thereof and the amounts due as well as establishing the priorities of any such liens; the notice to be given with respect thereto and to whom such notice is required to be directed; providing for an order or decree of distribution with respect to the funds derived from the sale of such real estate pursuant to such action; providing for limiting the cost recoverable with respect
to any other action brought later by creditors and the authority to enjoin the bringing thereof; establishing procedures relating to the presumption of death of certain persons and when such persons are to be presumed dead; establishing procedures with respect to the presumption of death of persons in the military service or certain other service of the United States with respect to certain hostilities in which the United States is engaged; when the spouse of such persons presumed dead may remarry; providing for petitions to the circuit court for a declaration that such supposed decedents are presumed dead and the jurisdiction of such courts with respect thereto; providing for the administration of the estates of persons presumed to be dead and the application for probate with respect thereto; the notice required to be given with respect to such application and the publication of such notice: providing for ancillary letters testamentary for nonresidents presumed to be dead; the hearing to be had with respect to the application for probate of the estate of resident and nonresident persons presumed to be dead; the probate of the will of such persons and the power of the clerk with respect thereto; the institution of an action by the personal representative for the settlement of such supposed decedent's estate and requiring certain notice and publication with respect thereto; providing for the distribution of the estate of such supposed decedent; the vacation of proceedings upon the reappearance of such supposed decedent; the hearing to be had with respect to the final accounting of the personal representative of such supposed decedent and the effect of his acts with respect thereto; providing certain rules with respect to the substitution of a supposed decedent upon his reappearance in any actions pending upon such reappearance; the reopening and effect of judgments after such substitution; providing that provisions of chapter forty-four shall apply to the estate of supposed decedent insofar as the same relate to the administration of their estates; providing for the payment of certain costs with respect to administration; providing generally for the appointment of guardians for infants and extending the rights of the parents to such children to name such persons to have custody of the person of such child; providing for renunciation for refusal to serve as such guardian and the voiding of such appointment thereby; the authority of the county commission to appoint such guardian for resident
infants and for nonresident infants in certain cases; establishing the rights of certain minors who have attained the age of fourteen years to nominate a guardian; requiring guardians to post bond and the appointment of a curator until such bond has been posted; providing certain procedures for the management of infant wards' estates and for the maintenance, education and custody of such infant wards; limiting the duration of the guardianship of such wards; procedures for the settlement of infants' estates; establishing certain rules and standards with respect to the disbursement and expenditure of the income of infants' estates; permitting the invasion of corpus in certain cases; the sale of the personal estate of the infant; providing for petition to the circuit court for permission so to do; requiring the guardian to pay interest to the estate of his infant ward for failure to properly invest the assets of the infant's estate; establishing certain standards with respect to the compounding of interest with respect thereto; establishing certain time limitations for the investment of infants' estates by guardians; the powers of the circuit courts over the assets of infants' estates and of the guardians; establishing certain procedures with respect to the sale of real estate with respect thereto; extending authority of a guardian to settle claims for injuries to an infant ward or to the property of such infant ward and procedures with respect thereto; providing for the release of tort feasor and a permissible form for the release of such person causing injury to such infant or his property; the disbursement of funds of infant wards without authority of the circuit court where sums received in settlement is less than one thousand dollars; providing for the appointment of guardians for mentally retarded or mentally handicapped persons; defining certain terms with respect thereto; applications to the county commission by parents and interested persons, corporations and governmental agencies and by executors of estates of parents when directed by will to make application; providing for consent of parents unless parents cannot be located; providing for powers and duties of guardians for control of the person, estate and moneys paid on behalf of such mentally retarded or handicapped persons; providing for the duration of guardianship until terminated by the county commission; requiring mentally retarded and mentally handicapped persons who are eighteen years of age or older to be present at hearings and providing for certain exceptions thereto;
providing for limited guardianships and standby guardianships; permitting nonprofit corporations to act as guardians, limited guardians and standby guardians of mentally retarded or mentally handicapped persons; giving the state director of health and the county commissions of the state powers, duties and responsibilities with respect thereto; relating to a certain licensure and certain compensation for certain corporations that are guardians; providing for appeals to circuit courts from orders of county commissions appointing and qualifying guardians and fiduciaries; providing for the transfer of bonds or other securities issued by this state or any political subdivision thereof which are owned by nonresident decedents or standing in the name of such nonresident decedents; the transfer of certain other securities issued by corporations or banks created by this state or having their principal place of business therein standing in the name of nonresident decedents; requiring the publication of notice with respect to such transfers; the transfer of property of nonresident infants or insane persons to foreign guardians or committees; procedure and notice relating thereto; procedure for the sale of real estate of nonresident infants, insane persons and beneficiaries of trusts; the disposition of the proceeds of such sale to foreign guardians, committees or trustees; providing for petitions to the circuit court for permission to transfer such property or proceeds; providing for the notice of the filing of such petition; providing for certain evidence to be required with respect to any orders directing such transfer; providing procedures for the transfer of assets in the hands of resident trusts belonging to nonresident beneficiaries; the petitions, notice and evidence required with respect to such transfers; the authority of the court to direct the sale of such property; the payment of the proceeds of such sale to nonresident fiduciaries and the discharge of resident trustees upon the completion of such transfer; the power of the circuit court to act in vacation of the term with respect to such transfers; provisions with respect to powers of the clerk of the county commission in the vacation of the county commission; providing for report by the county clerk to the county commission with respect to certain matters; the hearing required with respect to such reports; confirmation of certain actions of the circuit clerk or fiduciary supervisor taken during the vacation of the county commission and objections thereto; payment of certain costs with respect to hearings had on such
objections; the powers and duties of the clerks of the county commissions in counties having separate tribunals for police and fiscal affairs or purposes in lieu of county commissions; the function of such clerk in such counties; granting authority to certain persons to act as clerk of the county commission in such counties in all matters in which the clerk of the county commission has personal interest; the authority of the clerk of the county commission in such counties to impanel juries to settle questions of fact; requiring such clerks to maintain certain records and order books as are currently required to be kept by county commissions; establishing a time when clerks of such counties are required to perform certain tasks as are required to be performed by the clerks of the county commissions of the other several counties; establishing procedures of the circuit court for the substitution of trustees; establishing the powers of such substitute trustees; providing for the appointment of ancillary trustee under certain circumstances; procedures for the appointment of substitute trustee upon proper motion; providing that a remaining trustee or personal representative of such remaining trustee may execute a trust where more than one trustee was originally appointed; establishing the power and responsibility of a substituted or remaining trustee; provisions relating to the settlement of accounts of such guardians and for the removal of such persons for the failure to make such settlements; providing for maximum limits of compensation for such guardians; requiring the investment of the funds of the estate of any minor or mentally incapacitated person for whom a guardian was appointed; provisions relating to the support of persons who may be dependent upon the ward for whom such guardian was appointed; requiring that certain copies of public records are to be provided to the government of the United States or its agencies at no cost when required with respect to such ward; the commitment of certain person for treatment and care to the veteran's administration or any other agency of the United States government; the procedures with respect thereto; providing for the discharge of the guardian or committee when the ward has attained his majority or has been otherwise declared competent; providing for certain rules of construction with respect to the provisions of chapter forty-four; providing certain penalties with respect to noncompliance with various provisions of said chapter; establishing a time for the provisions of said chapter to become operative and for certain rules of construction prior to said provisions becoming
operative; providing for certain rules of procedure with respect to the settlement of tort claims of infants and the duty of fiduciary commissioners with respect thereto; and the compensation of such commissioners.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.
38. Liens.
44. Administration of Estates and Trusts.
56. Pleading and Practice.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

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.
§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.

1 The county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor and prosecuting attorney, by and with the advice and consent of the county commission, may appoint and employ, to assist them in the discharge of their official duties for and during their respective terms of office, assistants, deputies and employees. The county clerk may designate one or more of his assistants as responsible for all probate matters.

2 The county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor and prosecuting attorney shall, prior to March second of each year, file with the county commission a detailed request for appropriations for anticipated or expected expenditures for their respective offices, including the compensation for their assistants, deputies and employees, for the ensuing fiscal year.

3 Any deputy sheriff who is required to work on a holiday as observed by county employees generally shall be compensated for such time by being given a substitute day off.

4 The county commission shall, prior to March twenty-ninth of each year by order fix the total amount of money to be expended by the county for the ensuing fiscal year, which amount shall include the compensation of county assistants, deputies and employees. Each county commission shall enter its order upon its county commission record.

5 The county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor and prosecuting attorney shall then fix the compensation of their assistants, deputies and employees based on the total amount of money designated for expenditure by their respective offices by the county commission and the amount so expended shall not exceed the total expenditure designated by the county commission for each office.

6 The county officials, in fixing the individual compensation of their assistants, deputies and employees and the county commission in fixing the total amount of money to be expended by the county, shall give due consideration to the duties, responsibilities and work required of the assistants, deputies and employees and their compensation shall be reasonable and proper.
After the county commission has fixed the total amount of money to be expended by the county for the ensuing fiscal year and after each county official has fixed the compensation of each of his assistants, deputies and employees, as provided in this section, each county official shall file prior to June thirtieth, with the clerk of the county commission, a budget statement for the ensuing fiscal year setting forth the name, or the position designation if then vacant, of each of his assistants, deputies and employees, the period of time for which each is employed, or to be employed if the position is then vacant, and his monthly or semimonthly compensation.

All budget statements required to be filed by this section shall be verified by an affidavit by the county official making them. Among other things contained in the affidavit shall be the statement that the amounts shown therein are the amounts actually paid or intended to be paid to the assistants, deputies and employees without rebate, and without any agreement, understanding or expectation that any part thereof shall be repaid to him, and that, prior to the time the affidavit is made, nothing has been paid or promised him on that account, and that if he shall thereafter receive any money, or thing of value, on account thereof, he will account for and pay the same to the county. Until the statements required by this section have been filed, no allowance or payments shall be made to any county official or their assistants, deputies and employees.

Each county official named in this section shall have the authority to discharge any of his assistants, deputies or employees by filing with the clerk of the county commission a discharge statement specifying the discharge action: Provided, That no deputy sheriff appointed pursuant to the provisions of article fourteen, chapter seven of this code, shall be discharged contrary to the provisions of that article.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENCIARY.

§28-5-33. Appointment of committee of convict; bond.

1. When a person is confined in the penitentiary of this or any other state, or of the United States, under sentence for one year or more, or to suffer death, the estate of such convict in
this state, if he have any, both real and personal, shall, on the
motion of any party interested, be committed by the county
commission of the county in which his estate or some part
thereof may be, to a person selected by such county
commission, who, after giving bond before the county
commission in such penalty as it may prescribe, shall have
charge and management of such estate until the convict is
discharged from confinement or dies; and upon such motion
the county commission shall appoint said committee,
although the convict has no estate, either real or personal,
located in this state. In the event said convict has no such
estate, or his estate does not exceed one thousand dollars,
reference to a fiduciary commissioner shall not be necessary.
All appointments of committees heretofore made and decrees
or judgments heretofore awarded by any court of record in
this state against or on behalf of any convict shall not be
considered invalid for the reason that the convict had no such
estate at the time of the appointment of such committee.

CHAPTER 38. LIENS.

ARTICLE 13. ASSIGNMENT BY INSOLVENT FOR THE BENEFIT OF
ALL CREDITORS.

§38-13-3. Reference to fiduciary commissioner; appraisers.
1 Upon the qualification of the trustee, the clerk shall refer
the estate to a fiduciary commissioner of the county:
Provided, That in counties where there are two or more such
commissioners, such estate shall be referred to such
commissioners in rotation; and the clerk shall appoint three
disinterested appraisers to appraise all the property
belonging to the estate and, within seven days after their
appointment, they shall make to the fiduciary commissioner
a report thereof in writing duly sworn to.

§38-13-4. Trustee to file schedule; substitute trustee.
1 Within ten days after the recordation of an assignment,
conveyance or transfer the trustee shall cause to be made and
filed with the clerk of the county commission of the county
where the same is recorded a schedule containing:
(1) The name, occupation, place of residence and place of
business of the debtor;
(2) A full and true account of all creditors of the debtor,
stating the last-known place of residence of each, if known, or
if unknown, the fact to be stated; the sum owing to each, with
the true cause and consideration thereof; and a full statement
of any existing security for the payment of the same;
(3) A full and true inventory of all the debtor's estate at the
date of the assignment, both real and personal, in law and in
equity, with the liens and encumbrances existing thereon.
The trustee shall verify the schedule so made by him to the
effect that the same is in all respects just and true to the best
of his knowledge and belief, and shall state the sources of his
information and the grounds of his belief. The trustee shall at
the same time file a duplicate of the said schedule with the
fiduciary commissioner to whom the estate has been referred.
In case said trustee shall be unable to make and file such
schedule, within ten days, the fiduciary commissioner may,
upon application under oath, showing such inability, allow
him such further time as shall be necessary, not exceeding
thirty days. If the trustee fails to make and file such schedule
within said ten days or such further time as may be allowed,
the fiduciary commissioner shall require, by order, the
trustee forthwith to appear before him, and show cause why
he should not be removed, and, if good cause be not shown,
such trustee shall be removed and a meeting of the creditors
shall be called by the fiduciary commissioner, at which
meeting a substitute trustee shall be elected. Any person
interested in the trust estate may apply for such order and
demand such removal.

§38-13-5. Notice by trustee to creditors; publication and
mailing.
Within ten days after the filing of the schedule the trustee
shall cause to be published a notice reading substantially as
follows:
"To the Creditors of ..............................................:
Take notice that a general assignment for the benefit of
creditors was made by the above-named debtor to
.........., Trustee, on ............ and that said assignment
has been duly recorded in the office of the Clerk of the
County Commission of ............ County.
All persons having claims against the said debtor are
hereby notified that the same shall be presented to the
undersigned trustee on or before ............ The estate has
been referred to .........., fiduciary commissioner, and
the first meeting of the creditors will be held in his office at
.........., in ............ County, West Virginia, on
Said notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the assignment, conveyance or transfer was recorded.

A copy of said notice shall be mailed by the trustee on or before the date of the first publication thereof to every creditor whose name appears in the schedule or of whom the trustee has notice, to the assignor and to the fiduciary commissioner and an affidavit evidencing such mailing and publication shall be filed by the trustee with the fiduciary commissioner.

§38-13-6. Filing and proof of claims.

The trustee shall specify in the notice a date on or before which claims shall be presented to him which date shall not be less than thirty days nor more than sixty days after the date of the first publication of the notice, and no claim filed with the trustee after the date specified in the notice shall be recognized or allowed, except that if a surplus remain after the payment of the claims presented on or before the date specified such surplus shall be applied to the payment of the claims presented after that date. Claims of creditors shall be itemized, accompanied by proper vouchers, and verified by the affidavit of the creditor or his duly authorized agent, stating the character of the claim, whether open account, note, bond, bill, writing obligatory, judgment, decree or other evidence of debt, and the amount thereof, and from what date and on what items interest runs and at what percent per annum, and stating further that the claim is just and true, and that the creditor, or any prior owner of the claim, if such there was, has not received any part of the money stated to be due, or any security or satisfaction for the same, except what is credited. The vouchers for a judgment or decree shall be an abstract thereof; for a specialty, bond, note, bill of exchange, writing obligatory, or other instrument, shall be the instrument itself; or a true copy thereof, verified by the fiduciary commissioner, or proof of the same in case the instrument be lost; and for an open account, an itemized copy
of the account. A surety may prove a claim of a creditor which he has secured when such creditor fails or refuses to do so. Every claim so itemized, so accompanied by proper vouchers, and so verified, shall be taken to be proved and shall be allowed unless, before the trustee shall make up his report of claims, the assignor or a creditor or any party in interest shall file before the trustee a counter-affidavit denying the claim in whole or in part; and when such counter-affidavit is so filed the trustee shall at once refer the claim to the fiduciary commissioner who shall at the request of the claimant fix a time and place for hearing evidence of and against such claim and give reasonable notice of such time and place to the claimant and the party objecting. All hearings on disputed claims shall be completed within seven days after the last day on which claims may be presented to the trustee, unless for good cause shown the fiduciary commissioner extends the time for such hearings.

§38-13-8. First meeting of creditors; substitute trustee.

1 The fiduciary commissioner shall preside over the first meeting of the creditors which shall be held not less than ten nor more than twenty days after the date of the first publication of the notice thereof by the trustee. The assignor and the trustee shall attend the meeting, and either or both of them may be publicly examined at the meeting at the instance of any creditor. The creditors shall at the meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate, and the meeting may be adjourned from time to time if the creditors see fit. If a majority in number and amount of all the unsecured creditors of the assignor, including those absent as well as those present, desire that the trustee named in the assignment shall not serve, at the first meeting of the creditors such a majority may elect a substitute trustee who shall have all the rights, powers and duties conferred upon the trustee named in the assignment. The substitute trustee shall qualify by taking the oath and giving a proper bond before the clerk, and a copy of the order appointing the substitute trustee shall be recorded in each county in which the assignment is recorded. Creditors may be represented at meetings by their agents, employees, or attorneys, duly authorized in writing.
§38-13-9. Sales by trustee; creditors may prescribe manner and terms; powers of fiduciary commissioner; compromising claims; continuing operation of business.

1 At the first meeting of creditors a majority in number and amount of the creditors present may prescribe in what manner and on what terms the property belonging to the estate shall be sold, and the trustee shall not sell, or otherwise dispose of, any property belonging to the estate prior to the first meeting of the creditors, unless expressly authorized to do so by the fiduciary commissioner after good cause therefor has been shown. The trustee shall not sell, or otherwise dispose of, the property belonging to the estate for less than seventy-five percent of its appraised value without the approval of the fiduciary commissioner. The trustee may compromise or compound any claim or debt belonging to the estate with the approval of the fiduciary commissioner. All sales by the trustee shall be made at public auction, unless otherwise ordered by the fiduciary commissioner or authorized by the creditors. The trustees shall give at least ten days' notice by mail to all of the creditors of the time and place of sale of any property belonging to the estate of the value of five hundred dollars, or more, and shall advertise the sale as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice and advertisement may be waived by the creditors at their first meeting. Upon application to the fiduciary commissioner, and for good cause shown, the trustee may be authorized to sell any portion of the estate at private sale, in which case he shall keep an accurate record of each article sold, the price received therefor and to whom sold, which account he shall file with the fiduciary commissioner. Upon application by the trustee or a creditor setting forth that a part or the whole of the estate is perishable, the nature and location of such perishable property, and that there will be loss if the same is not sold immediately, the fiduciary commissioner, if satisfied, of the facts stated and that the sale is required in the interests of the estate, may order the same to be sold without notice or with such notice as he may direct. Upon application by the trustee or a creditor setting forth that it is for the best interest of the estate that the trustee continue to operate the business, the
§38-13-10. Trustee's report to fiduciary commissioner; notice to creditors of filing and second meeting.

Within ten days after the last day on which claims may be presented to him the trustee shall file with the fiduciary commissioner a report showing the names of the creditors whose claims have not been contested and who have filed proper proofs of claims, and the amounts thereof; the names of the creditors whose claims have been contested, and the amounts thereof; the disposition he has made of the property belonging to the estate; the costs and expenses he has incurred; the amount of money he has on hand and the name of the bank in which it is deposited; the property of the estate not disposed of and his plans for disposing of the same. The trustee shall attach to said report all proofs of claims, vouchers, exhibits, accounts, writings, affidavits and counter-affidavits which have been filed with him. The trustee shall at once notify each creditor who has presented a claim that the report has been filed, and that a meeting of the creditors will be held before the fiduciary commissioner on a date specified in the notice, which date shall not be less than five days after the notice is mailed nor more than ten days after the report is filed.

§38-13-11. Report by fiduciary commissioner; appeal from decision; allowance of expenses and fees; directions to trustee; dividends; closing trusteeship.

At the meeting of the creditors held following the filing of the trustee's report the fiduciary commissioner shall file a report showing how much, if anything, he has allowed on each of the disputed claims. Any party interested may, within ten days thereafter, appeal from the decision of the fiduciary commissioner to the circuit court of the county without any formal bill of exceptions, and the appeal shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record made before the fiduciary commissioner. At the same meeting the fiduciary commissioner shall approve such expenditures, costs and
12 expenses as he may find necessary and proper in the
13 administration of the estate; shall direct the payment of
14 proper fees and fiduciary commissions; shall direct the
15 trustee to distribute the funds in his hands belonging to
16 secured creditors; and shall direct the trustee to pay a
17 dividend of an equal percent on all allowed claims, except
18 such as have priority or are secured. A secured creditor whose
19 claim is in excess of the security held may share in such
20 dividend on such excess only. The trustee shall not pay such
21 dividend until the time has expired within which an appeal
22 may be taken from the decision of the fiduciary
23 commissioner on a disputed claim, and if any such appeal is
24 pending the trustee shall retain in his hands sufficient money
25 to pay the same dividend thereon, should the claim be
26 allowed on appeal, and shall distribute the remainder to the
27 creditors entitled thereto. After paying any dividend the
28 trustee shall file with the fiduciary commissioner a copy of a
29 dividend sheet showing to whom the dividend was paid. If all
30 of the property belonging to the estate has not been disposed
31 of at the time of said meeting, the trustee shall from time to
32 time make further reports to the fiduciary commissioner, and
33 the fiduciary commissioner may direct the trustee to pay
34 further costs, expenses, fees and dividends. Dividends which
35 are unclaimed for six months shall be distributed among the
36 remaining creditors whose claims have been allowed. After
37 the trustee has disposed of all the property belonging to the
38 estate, and has paid out all of the funds which have come into
39 his hands, he shall without delay make a final report in
40 duplicate to the fiduciary commissioner showing all his
41 receipts and disbursements, and if the fiduciary
42 commissioner finds the same correct and approves it, the
43 fiduciary commissioner shall enter an order discharging the
44 trustee, a copy of which order the fiduciary commissioner
45 shall furnish to the surety on the bond of the trustee, and the
46 fiduciary commissioner shall transmit a copy of said order
47 and a copy of the final report of the trustee to the clerk of the
48 county commission to be filed.

§38-13-12. Powers, duties and qualifications of trustee; substitute
for unqualified, removed, deceased or disabled
trustee.
1 It shall be the duty of the trustee to collect and reduce to
2 money the property belonging to the estate; to keep all funds
belonging to the estate on deposit in a sound bank; to report promptly to the creditors any claims presented to him which are not provable or are incorrect or false so that counter-affidavits may be filed thereto; to file the reports and give the notices herein provided for; to close up the estate as expeditiously as possible; to furnish such information concerning the estate as may be requested by parties in interest; to keep regular accounts; to pay dividends as often as is compatible with the best interests of the estate. The trustee shall, as to all property transferred by the assignment, be deemed vested with all the rights, remedies and powers of a creditor holding a lien thereon by legal or equitable proceedings. The trustee shall be a resident of West Virginia, and shall not occupy the position of relative, creditor, attorney, agent or employee to the assignor, nor an officer of the assignor, if the assignor be a corporation, and if an assignment, conveyance or transfer be made to such person it shall not for that reason be void, but shall be deemed to be for the benefit of all the creditors of the assignor, and the clerk, at the request of any party in interest, may refer the estate to a fiduciary commissioner who shall proceed to call a meeting of the creditors, at which meeting a majority in number and amount of the creditors present shall elect a substitute trustee. Upon the petition of one or more creditors showing misconduct or incompetency of the trustee, or on the petition of the trustee himself, showing sufficient reason therefor, and after due notice of not less than five days to the assignor, trustee, the surety on the bond of the trustee, and the creditors whose claims have been filed with the trustee, the fiduciary commissioner may, after hearing the parties in interest, remove or discharge the trustee; and in that event a majority in number and amount of the creditors present shall elect a substitute trustee. If the trustee shall die or become unable to act the fiduciary commissioner shall call a meeting of the creditors whose claims have been filed with the trustee, after notice of not less than five days, and a majority in number and amount of the creditors present at the hearing shall elect a substitute trustee.


1 Fiduciary commissioners shall have power to preside over all meetings of creditors; to preside over all examinations of the assignor or trustee; to allow and disallow all claims presented to them for determination; to administer oaths to
5 witnesses; to issue subpoenas for the attendance of any
6 person for examination; to examine accounts filed by trustees
7 hereunder, to hear and determine any objections thereto, and
8 to surcharge any trustee for any moneys improperly
9 expended or for which the trustee shall have failed to
10 account; to authorize the business of the assignor to be
11 conducted for limited periods by the trustee if necessary in
12 the best interests of the estate; to reopen estates whenever it
13 appears that they have been closed before being fully
14 administered; to authorize a trustee to bring an action, which
15 he is hereby empowered to maintain, against any person who
16 has received, taken, or in any manner interfered with the
17 estate, property or effects of the debtor, in fraud of his
18 creditors, and which might have been avoided by a creditor of
19 the assignor, and the trustee may recover the property so
20 transferred or its value; to require or allow any inventory or
21 schedule filed to be corrected or amended, and require and
22 compel from time to time supplemental inventories or
23 schedules to be made and filed; to determine the excess of the
24 claims of secured creditors over and above the value of the
25 securities held by them; to require the trustee to render and
26 file the accounts and reports herein provided for; to authorize
27 and approve the payment of costs, expenses, fees and
28 commissions; to declare dividends; to discharge the trustee
29 and his surety after the trustee has properly completed the
30 performance of his duties; to authorize the appointment of an
31 attorney for the trustee if necessary in the best interests of the
32 estate.

1 The assignor shall comply with all lawful orders of the
2 fiduciary commissioner, examine the correctness of all claims
3 presented against the estate if ordered by the fiduciary
4 commissioner so to do, and if any are incorrect or false notify
5 the trustee thereof immediately; deliver to the trustee all his
6 books, papers and records; execute and deliver such papers
7 relating to the estate as shall be ordered by the fiduciary
8 commissioner; execute and deliver to the trustee proper
9 transfers of all his property outside the state of West Virginia;
10 attend the first meeting of the creditors; and submit to an
11 examination under oath concerning the conduct of his
12 business, the cause of his inability to pay his debts, his
13 dealings with his creditors and other persons, the amount,
14 kind and whereabouts of his property, and all matters which
may affect the administration and settlement of his estate, but no testimony given by him shall be offered in evidence against him in any criminal proceedings. The books and papers of the assignor shall at all times be subject to the inspection and examination of any creditor.

§38-13-15. **Fiduciary commissioner to certify to circuit court disobedience of order, etc.; punishment for contempt by court.**

The fiduciary commissioner shall certify the facts to the circuit court of the county if any person shall disobey or resist any order, process or writ which may be issued, or misbehave during any hearing, or neglect to produce, having been ordered to do so, any pertinent documents, or refuse to appear, take the oath, or be examined according to law, after having been subpoenaed. Upon the filing of such certificate by any fiduciary commissioner the judge shall in a summary manner hear the evidence of the acts complained of, and, if it is such as to warrant him in so doing, he may punish such person in the same manner and to the same extent as for a contempt committed before the court.

§38-13-16. **Expenses and fees of trustee, fiduciary commissioner, appraisers and attorneys for trustee.**

Trustees shall be allowed their reasonable and necessary disbursements for the costs and expenses and shall receive for their services commissions of all moneys disbursed or turned over by them to any person, including lienholders and secured creditors, which commissions shall be ten percent on the first fifteen hundred dollars or less, five percent on moneys in excess of fifteen hundred dollars and less than ten thousand dollars, three percent on moneys in excess of ten thousand dollars and less than twenty-five thousand dollars, and two percent on moneys in excess of twenty-five thousand dollars, or such additional compensation as a majority in number and amount of the creditors present at the meeting provided for in section ten of this article, or at a subsequent meeting held for the purpose of fixing compensations, shall allow, but the compensation shall in no case be less than fifty dollars. Fiduciary commissioners shall be allowed their reasonable and necessary disbursements for costs and expenses and shall receive for their services such compensation as the court shall from time to time prescribe. The fiduciary commissioner shall indicate, in writing, the
compensation he believes he is entitled to receive for services performed. Appraisers shall receive for their services a fair and reasonable allowance which shall be fixed by the fiduciary commissioner upon a petition therefor showing the amount of time spent by the appraisers in the performance of their duties. Attorneys for the trustee shall receive for their service a fair and reasonable allowance which shall be fixed by the fiduciary commissioner upon petition showing the service rendered by them.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

§44-1-23. Actions for goods carried away, waste, or damage to estate of or by decedent.

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

The real and personal estate of every deceased person, or in which such deceased person had an interest at the time of his death, shall be appraised as follows: The commission by whose order any person is authorized to act as personal representative, or the fiduciary supervisor thereof, shall, upon the qualification of such personal representative and at the time thereof appoint not less than three nor more than five appraisers, any three of whom may act, in the county in which the will of the deceased is probated or administration is granted upon his estate, and a like number in every other county in which there may be any real or personal estate of
Provided, That at the request of the personal representative the appraisers appointed in the county in which the will of the deceased is probated or administration is granted upon his estate shall have the authority to act in any county in the state in which there may be any real or personal estate of the deceased and the commission or fiduciary supervisor shall so designate in the order of appointment, and, in such event, it shall be unnecessary to appoint appraisers in every other county in which there may be any real or personal estate of the deceased. Such appraisers, after first taking an oath for the purpose, shall list and appraise at its real and actual value all the real estate and all the tangible property of every description owned by the deceased at the time of his death including, but not limited to, all real estate and tangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another person by reason of the death of such decedent whose estate is being so appraised and irrespective of whether such real estate or tangible property is subject to administration and located in each county or the counties, as the case may be, and they shall also list and appraise at its real and actual value all his intangible property of every description, including moneys, credits, investments, annuities (other than those annuities which are exempt from taxation under the provisions of subsection (g), section one, article eleven, chapter eleven of this code), life insurance policies (irrespective of whether such policies are payable to named beneficiaries or in trust or otherwise), judgments and decrees for moneys, notes, bonds, accounts and all other evidences of debt, whether owing to him by persons or corporations in or out of the state, and the number and value, including both the par value, if any, and the actual value, of any shares of capital stock owned by him in any corporation, and every other item of intangible property of whatsoever nature or kind, including all intangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another by reason of the death of such decedent, and irrespective of whether such intangible property is subject to administration and whether located in this state or elsewhere. Any real estate or interest therein so appraised shall be identified with particularity and description, shall identify the source of title in the decedent and the location of such
realty for purposes of real property ad valorem taxation. Such appraisers shall designate such intangible property as good, bad or doubtful as to them may appear to be correct, and by whom owing and when payable, and from what time such of them as are interest-bearing bear interest. Every note, bond or evidence of debt shall have endorsed thereon the word "appraised," under which each acting appraiser shall sign his name. No judgment shall be rendered by any of the courts of the state upon such note, bond or evidence of debt unless and until the same shall be first shown to have been listed by the appraisers. Any note, bond or evidence of debt which bears the endorsement by the appraisers, as above required, shall need no further proof that the same was listed. In addition to all other information required by law, the appraisement shall contain and include a questionnaire designed and formulated by the tax commissioner which is designed for the purpose of examining the personal representative to determine that he has made a thorough and proper search and investigation as to the existence and value of each and every kind and specie of property required to be included within, and subject to appraisement by, the provisions of this or any other section of this code, which said questionnaire shall be completed and answered upon the oath or adjuration of each such appraiser and the personal representative or fiduciary.

The several appraisements, lists and questionnaire aforesaid shall be executed in triplicate and shall be signed by the appraisers who made the same, and be approved by the personal representative, and be forthwith returned to the fiduciary supervisor. Such supervisor shall inspect such appraisements, lists and questionnaire, see that the same are in proper form, and that all property, if any, suggested by the questionnaire is included within the appraisement, and, within ten days after they are received and approved by him, deliver two copies of the same to the clerk of the county commission, who shall record the same, with the certificate of approval of the supervisor, and mail one copy of the same to the tax commissioner of West Virginia. The date of return of an appraisement shall be entered by the clerk of the county commission in his record of fiduciaries. Every such appraisement and list shall be prima facie evidence of the value of the property embraced therein, and that the personal estate embraced therein which is subject to administration
came to the hands of the personal representative. Such appraisers shall each receive a fee of not less than one dollar nor more than one hundred dollars per day, to be fixed by such supervisor in accordance with the amount of the estate and the work involved in making the appraisement, and their actual expenses necessarily incurred in making such appraisement, and such fees and expenses and the supervisor's approval thereof shall be noted in the fiduciary supervisor's certificate. No person shall be permitted by any means whatsoever to avoid the appraisement and listing of his estate and of all property, real, tangible and intangible, of whatsoever nature and kind, in which a beneficial interest passes to another by reason of the death of the decedent and irrespective of whether such property is subject to administration as herein provided, nor shall his personal representative be permitted to do so. Any personal representative who fails, refuses or declines to comply with the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

Every personal representative shall have authority to retain or hire the services of such expert or experts as may be deemed appropriate to assist and advise the appraisers in and about their duties in appropriately and accurately appraising all or any part of the assets or property to be appraised according to the provisions of this section. Such expert or experts so retained or hired shall be compensated a reasonable sum by the personal representative from the assets coming into his hands or of which he is embraced, which compensation and the reasonableness thereof shall be subject to review and approval by the county commission, upon the recommendation of the fiduciary supervisor.

§44-1-23. Actions for goods carried away, waste or damage to estate of or by decedent.

A civil action may be maintained by or against a personal representative for the taking or carrying away of any goods, or for the waste or destruction of, or damage to, any estate of or by his decedent.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.
§44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative, to the county clerk, the estate of his decedent shall, by order of the county commission to be then made, be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary and proper for the settlement of the estate:

Provided, That in counties where there are two or more such commissioners, the estates of decedents shall be referred to such commissioners in rotation, in order that, so far as possible, there may be an equal division of the work:

Provided, however, That if the personal representative shall deliver to the clerk an appraisement of the assets of the estate showing their value to be twenty-five thousand dollars or less, exclusive of property held by the decedent and another
person or other persons as joint tenants with rights of survivorship, the clerk shall record said appraisement and publish a notice as set forth herein. The personal representative shall, within two months from the date of recordation of the appraisement in such case, make report to the clerk of his receipts, disbursements and distribution, and shall make affidavit that all claims against the estate, for expenses of administration, taxes and debts of the decedent, have been paid in full; the clerk shall be entitled to collect and receive a fee of ten dollars for recording such report and affidavit, and for publication of the notice hereinafter provided, said fee to be in lieu of any other fee provided by law for recording a report of settlement of the accounts of a decedent's personal representative. It shall be the duty of the clerk, at least once a month, to cause to be published once a week for two successive weeks in a newspaper of general circulation within the county of the administration of the estate, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

I have before me the accounts of the executor(s) or administrator(s) of the estates of the following deceased persons:

.................................................................

.................................................................

.................................................................

Any person having a claim against the estate of any such deceased person, or who has any beneficial interest therein, may appear before me or the county commission at any time within thirty days after first publication of this notice, and request reference of said estate to a commissioner or object to confirmation of said accounting. In the absence of such request or objection, the accounting may be approved by the county commission.

.................................................................

Clerk of the County Commission

of .................................. County, W. Va.

If no such request or objection be made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, and thereupon the personal representative and his surety shall be discharged; but if such objection or request be made, the county commission may confirm the accounting or may refer the estate to one of its fiduciary commissioners.
(b) If upon the return and recordation of the appraisement, it shall appear to the clerk that there is only one beneficiary of the estate and that said beneficiary is competent at law, there shall be no further administration upon the estate, and no reference to a fiduciary commissioner, unless, for due cause, the county commission shall order further administration and a reference to a fiduciary commissioner. The bond of the personal representative and his surety shall be discharged one year after the date of qualification of the personal representative if no claim shall have been filed with the county clerk and no suit shall have been instituted against the personal representative. The clerk shall publish a notice once a week for two successive weeks in a newspaper of general circulation within the county of administration of the estate, substantially as follows:

NOTICE OF UNADMINISTERED ESTATE

Notice is hereby given that, there being only one beneficiary of the estate of the deceased, there will be no subdivision of said estate unless within ninety days demand for administration be made by a party in interest or an unpaid creditor.

Dated this ..........day of ..........., ........

..................................................

Clerk of the County Commission

of ........................................County, W. Va.

The clerk shall charge to the personal representative, and receive, the reasonable cost of publication of said notice.

If no person demands administration and no creditor appears in response to the notice hereinabove provided, alienation of the decedent’s real estate more than six months after the date of the notice to a bona fide purchaser for value without notice of any claim against the estate shall be free of any lien for taxes or debts of the decedent, notwithstanding the provisions of section five, article eight, chapter forty-four of this code.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

Each month the fiduciary commissioner shall publish a notice designating a convenient time and place when and where claims against the estate or estates referred to him
during the previous calendar month may be presented, examined and allowed. The time so designated by the fiduciary commissioner shall not be less than two months nor more than three months from the date of the first publication of the notice hereinafter set forth. The notice shall be to the following effect:

To the Creditors and Beneficiaries of the Estate(s) of

(Naming the decedent or decedents, as the case may be)

All persons having claims against the estate(s) of the said
(Naming the decedent or decedents, as the case may be) deceased, whether due, or not, are notified to exhibit same, with the voucher thereof, legally verified, to the undersigned, at (designating the place) on or before the ............day of ..........., ....; otherwise they may by law be excluded from all benefit of said estate(s). All beneficiaries of said estate(s) may appear on or before said day to examine said claims and otherwise protect their interests.

Given under my hand this ............day of ..........., .....

Fiduciary Commissioner,

County of ........................................

Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The publication of such notice shall be equivalent to personal service on the creditors, distributees and legatees, or any of them.

§44-2-3. Fiduciary commissioner to certify to publication of notice.

In his report of settlement of the accounts of the personal representative, to be made as hereafter provided, the fiduciary commissioner shall certify that the notice required by section two of this article was published and shall state the name of the newspaper in which the notice was published and the dates of publishing.

§44-2-4. Mailing of notice to creditors, distributees and legatees.

When the fiduciary commissioner has fixed the time for presentation of claims, the personal representative shall file with such fiduciary commissioner a list of the names and
post-office addresses of all known creditors of the estate and
of all distributees and legatees, to each of whom the fiduciary
commissioner shall cause a copy of such notice to be
forwarded by United States mail, addressed according to
such list. But failure to mail, or to receive, such notice shall
not relieve any creditor, distributee or legatee of the duty to
present and prove his claim as required by such notice, nor in
any way affect the proceedings pursuant to such notice.

§44-2-5. Claims to be proved by vouchers and affidavits in first
instance.

Every claim against the estate of a decedent shall be
itemized, accompanied by proper vouchers, and shall state
the character of the claim, whether open account, note, bond,
bill, writing obligatory, judgment, decree, or other evidence
of debt, and the amount thereof, and from what date and on
what items interest runs and at what percent per annum, and
stating further that the claim is just and true, and that the
creditor, or any prior owner of the claim, if such there was,
has not received any part of the money stated to be due, or
any security or satisfaction for the same, except what is
credited. The voucher for a judgment or decree shall be an
abstract thereof; for a specialty, bond, note, bill of exchange,
writing obligatory, or other instrument, shall be the
instrument itself, or a true copy thereof, or proof of the same
in case the instrument be lost; and for an open account, an
itemized copy of the account. This section shall not apply to
taxes.

§44-2-7. Claims may be presented before publication of notice.

Claims against any decedent’s estate may be filed with or
presented to the fiduciary commissioner to whom the estate
has been referred, at any time following the qualification of
the personal representative, notwithstanding the notice to
creditors shall not have been published previously to such
filing or presentation.

§44-2-8. Proof of contingent or unliquidated claims.

Whenever at the death of any person there shall be a
contingent or unliquidated claim against his estate, or an
outstanding bond, recognizance or undertaking upon which
the deceased shall have been principal or surety or
indemnitor, and on which at the time of his death the liability
is still contingent or unliquidated, the claimant or the surety
shall have the right to file with the fiduciary commissioner or personal representative, as the case may be, at the time provided for in the notice, proof of his claim in the same manner as other claims, stating in his affidavit the facts upon which such contingent or unliquidated liability is based and the probable amount thereof. When so filed there shall be no distribution of the assets of the estate, except as otherwise provided in this article, without the reservation of sufficient moneys to pay, when the amount is finally determined, such contingent or unliquidated claim, or a proportion thereof equal to what is paid to other creditors of the same class. If such liability becomes fixed before a fiduciary commissioner completes his report, then evidence of the same may be filed with the fiduciary commissioner in lieu of the contingent claim herein provided for, and such claim as fixed shall be a debt of the estate.

§44-2-13. Effect of presenting claim as to statute of limitations.
1 The filing with or presentation to the fiduciary commissioner or to the county clerk of any claim against the estate of a decedent shall, so far as the running of any statute of limitations is involved, have the same effect as the institution of a civil action or suit on such claim.

§44-2-14. Advance payment of certain claims.
1 The fiduciary commissioner may authorize, and the personal representative may make, payment of funeral expenses, claims of physicians and nurses for services rendered during the last illness of the decedent, and accounts of druggists, hospitals and sanitariums for articles furnished and services rendered during the same period, to the extent that any of the same are preferred; also of debts due the United States, debts due the state of West Virginia, and taxes, in advance of the determination of other claims.

§44-2-15. Personal representative not precluded from commencing action or suit; setoff in such actions or suits.
1 Nothing in this article contained shall be construed to prevent any personal representative, when he shall think it necessary, from commencing any action or suit against any person, or from prosecuting to final judgment or decree any action or suit commenced by the deceased in his lifetime, if the cause of such action or suit survives, for the recovery of any debt or claim, or from having execution on any judgment
or decree. The defendant in any such action or suit shall, notwithstanding he may have already filed his claim before a fiduciary commissioner, set off any claim he may have against the deceased, if proper to be allowed as a setoff; and if final judgment or decree shall be rendered in favor of the defendant, the same shall be certified by the clerk of the court rendering it to the fiduciary commissioner before whom the estate of the deceased is pending, and the amount thereof shall be allowed in the same manner as other claims against such estate filed and proved before the fiduciary commissioner.

§44-2-16. Fiduciary commissioner to report on claims of creditors, assets and shares of distributees and legatees.

After the completion of the hearings for the presentation of claims and for reception of proof for and against disputed claims, but not later than five months from the qualification of the personal representative, the fiduciary commissioner may, and upon motion of any interested person shall, prepare a report of claims against the estate, showing in such report all the claims presented, or exhibited in offset, or certified to the fiduciary commissioner by any court, and stating as to each claim how much was allowed and how much disallowed, together with the final balance, whether in favor of the creditor or the estate. The fiduciary commissioner shall also show in such report what assets are in the hands of the personal representative, and shall designate how the same shall be applied to the payment of debts and claims; also in what order of priority the claims shall be paid and also what sum shall be reserved to pay contingent or unliquidated claims and claims not matured, or a proportion of any such claim equal to what is allowed to other creditors of the same class, when payment of such claims shall become proper. Such report shall also show what persons are entitled to share in the estate as legatees, and as such in what property or amounts; or as distributees, and as such in what proportions.

§44-2-16a. Apportionment of federal estate taxes; fiduciary to deduct taxes from shares of beneficiaries.

(1) For the purposes of this section the term "persons interested in the estate" shall include all persons, firms and corporations who may be entitled to receive or who have received any property or interest which is required to be
included in the gross estate of a decedent, or any benefit whatsoever with respect to any such property or interest, whether under a will or intestacy, or by reason of any transfer, trust, estate, interest, right, power or relinquishment of power, taxable under any estate tax law of the United States heretofore or hereafter enacted.

(2) Whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding, that an executor, administrator, curator or other person acting in a fiduciary capacity, has paid an estate tax levied or assessed under the provisions of any estate tax law of the United States heretofore or hereafter enacted, upon or with respect to any property required to be included in the gross estate of a decedent under the provisions of any such law, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues. Such apportionment shall be made in the proportion that the value of the property, interest or benefit of each such person bears to the total value of the property, interests and benefits received by all such persons interested in the estate, except that in making such proration each such person shall have the benefit of any exemptions, deductions and exclusions allowed by such law in respect of such person or the property passing to him; and except that notwithstanding the preceding provisions of this sentence in cases where a trust is created, or other provision made whereby any person is given an interest in income, or an estate for years, or for life, or other temporary interest in any property or fund, the tax on both such temporary interest and on the remainder thereafter shall be charged against and paid out of the corpus of such property or fund without apportionment between remainders and temporary estates.

(3) In all cases in which any property required to be included in the gross estate does not come into the possession of the executor, administrator or other fiduciary as such, he shall be entitled, and it shall be his duty, to recover from whomever is in possession, or from the persons interested in the estate, the proportionate amount of such tax payable by the persons interested in the estate with which such persons interested in the estate are chargeable under the provisions of this section.

(4) No executor, administrator or other person acting in a
fiduciary capacity shall be required to transfer, pay over or
distribute any fund or property with respect to which a
federal estate tax is imposed until the amount of such tax or
taxes due from the devisee, legatee, distributee, or other
person to whom such property is transferred, is paid to such
fiduciary, or, if the apportionment of tax has not been
determined, adequate security is furnished by the transferee
for such payment.

(5) But it is expressly provided that the foregoing
provisions of this section are subject to the following
qualification, that none of such provisions shall in any way
impair the right or power of any person by will or by written
instrument executed inter vivos to make direction for the
payment of such estate taxes, and to designate the fund or
funds or property out of which such payment shall be made,
and in every such case the provisions of the will or of such
written instrument executed inter vivos shall be given effect
to the same extent as if this section had not been enacted.

(6) The provisions of this section shall be applicable to
estates of decedents dying after the enactment of this section.

§44-2-17. How contingent and unliquidated claims and claims
not matured may be provided for.

1 The fiduciary commissioner in his report on claims shall
direct the personal representative to withhold from
distribution to beneficiaries sufficient assets to take care of
such contingent and unliquidated claims and claims not
matured as shall be presented to and proved before the
fiduciary commissioner, or a proportion thereof equal to what
is paid to other creditors of the same class, and such assets
shall be so withheld until such contingent liability becomes
fixed, or such unliquidated liability becomes liquidated, or
until such claims not matured mature, as the case may be, at
which time such assets shall be disbursed or distributed as
the fiduciary commissioner in his report may have designated
and the circumstances may require. But in any case where
there are sufficient assets to pay all liquidated claims against
any estate, any legatee or distributee of the estate shall be
entitled to be paid his or her share of the full surplus of the
estate, after payment of, or provision for, all liquidated
claims, both those matured and those not matured has been
made, upon such legatee's or distributee's giving to the
personal representative a bond, executed by himself or some
other person, with sufficient security, to be approved by the county commission, or the clerk thereof during the recess of the commission, conditioned to refund a due proportion of any unliquidated or contingent debts or demands which may afterwards appear against the decedent or become liquidated or have their liability fixed, and of the costs attending their recovery. Such bond shall be filed in the clerk's office where probate of the will or administration of the estate was had, and recorded by such clerk in the record of bonds. After the giving of any such bond or bonds, creditors holding unliquidated or contingent debts and demands shall, as to the estate distributed by virtue of the giving of such bond or bonds, look only to such bond or bonds for the payment of such debts and demands.

§44-2-18. Exceptions to fiduciary commissioner's report; return of report.

After preparing a report of claims as hereinafter provided, the fiduciary commissioner shall give notice thereof, either verbally or in writing, delivered personally or by mail, to all parties interested or their attorneys, and hold the report and the evidence taken in connection therewith in his office for ten days for the examination of parties interested. Any party may inspect such report and evidence and file exceptions thereto before said fiduciary commissioner: and the fiduciary commissioner, in all cases, shall return with his report all the evidence taken in connection with any claim listed in such report, and the exceptions, if any, taken to the report, and shall submit such remarks upon the exceptions as he may deem pertinent. After the expiration of such ten days the fiduciary commissioner shall return the report, evidence, exceptions and remarks to the county commission, and until the report is acted upon by the county commission it shall be subject to further exceptions by the same or other parties interested.

§44-2-19. Hearing on report and exceptions; appeal; effect of confirmation.

The hearing on the report of claims returned by a fiduciary commissioner shall be had at the first term of the county commission occurring not earlier than ten days after its return. If there be no exceptions to such report it shall be confirmed, but if excepted to, the county commission shall pass upon the exceptions and make its order thereon, without
hearing or receiving any new evidence; but if good cause be shown for the introduction of further proof regarding any matter contained in such report, the report shall be referred back to the fiduciary commissioner for the taking of further proof and the making of a supplemental report. An appeal from the decision of such county commission on such report and exceptions and on the supplemental report and exceptions, if there be such supplemental report, may, without any formal bill of exceptions, be taken to the circuit court of the county. The appeal shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record made before the fiduciary commissioner and on order of the county commission. After the report of the fiduciary commissioner on the claims against the estate of any decedent has been confirmed by the county commission, or the circuit court on appeal, or corrected and confirmed after appeal, the same shall be forever binding and final.

§44-2-22. Creditors to be paid in order of classification; when classes paid ratably.

No payment shall be made to creditors of any one class until all those of the preceding class or classes shall be fully paid; and when the assets are not sufficient to pay all the creditors of any one class, the creditors of such class shall be paid ratably; but a personal representative who, after six months from his qualification, pays a debt of his decedent, shall not thereby be personally liable for any debt or demand against the decedent of equal or superior dignity, whether it be of record or not, unless before such payment he shall have notice of such debt or demand by action, suit or presentation thereof to the fiduciary commissioner within the time allowed by law.

§44-2-23. When personal representative not liable for funds distributed.

If any personal representative after six months from the qualification of the first executor or administrator of the estate, and after the report of claims, if any, has been made by the fiduciary commissioner and been confirmed by the county commission, and after withholding such funds as the fiduciary commissioner shall direct to meet any contingent and unmatured claims and claims in action or suit, shall pay any legacy given by the will, or distribute any of the estate of his decedent in accordance with the fiduciary commissioner's
§44-2-24. When claims and legacies may be paid and estate distributed.

After the report of a fiduciary commissioner, if any, on the claims against the estate of any decedent has been confirmed as aforesaid, or after six months from the time of the qualification of the first executor or administrator shall have elapsed, the personal representative may pay the claims allowed by the fiduciary commissioner against the decedent's estate or certified to him by courts wherein judgments or decrees against the estate have been rendered, according to the order of payment set forth in the fiduciary commissioner's report, or as directed by the fiduciary commissioner, and pay legacies and distribute the surplus among the parties entitled thereto in the amounts and proportions determined by the fiduciary commissioner withholding such sum as such report as confirmed states to be necessary for the payment of any contingent, unliquidated, or disputed claims, or claims not matured, or the proportions of any such equal to what is allowed to other creditors of the same class, and upon the determination from time to time of any such claims further payments and distributions may be made as the circumstances require. If the personal representative shall fail or refuse to pay claims and make distribution within one month following the time when he may legally do so, and no appeal has been taken from the order of confirmation of the report on claims, any party interested may institute a civil action against such personal representative to compel payment and distribution as provided by section twenty-two, article four of this chapter.

§44-2-24a. Accounting for money not disposable at time of settlement; subsequent distribution of such money.
Notwithstanding any other provision of law, if an estate is otherwise ready for final settlement and the personal representative holds any sum or sums of money necessary for the payment or distribution of any contingent, unliquidated, unmatured or disputed bequest or claim, which cannot be paid or distributed because the whereabouts of the claimant or distributee are unknown, or cannot be paid or distributed for any other reason, he may, with the consent of the fiduciary commissioner to whom the estate has been referred, pay such sum or sums to the general receiver of the circuit court in the county in which the estate is being administered. Any such payment, together with a receipt therefor, shall be reflected and shown in said fiduciary commissioner's final report. After said report is confirmed by the county commission, such personal representative shall not be personally liable for any such aforesaid bequest or claim.

Any person entitled to any funds paid to a general receiver of a circuit court pursuant to the provisions of this section may petition the circuit court in a summary proceeding for an order directing the distribution of such funds. Any person believed to have any claim to or interest in said funds shall be made a party defendant to such petition and shall be given such notice of any hearing thereon as the circuit court may direct. The circuit court shall enter an order directing the distribution of said funds to the person or persons entitled thereto. The costs of said proceedings shall be paid from the funds.

§ 44-2-25. When personal representative not compelled to make distribution.
A personal representative shall not be compelled to pay any legacy given by the will, or make distribution of the estate of his decedent, until after six months from the date of the order conferring authority on the first executor or administrator of such decedent, and not then unless the report of claims against the estate made by the fiduciary commissioner has been confirmed, and no appeal has been taken from the county commission's order of confirmation.

§ 44-2-26. When claims not presented and proved barred of recovery from personal representative.
Every person including the state tax commissioner, having a claim against a deceased person, whether due or not, who has not, after notice to creditors has been published as
prescribed in this article, presented his claim on or before the
time fixed in such notice, or before that time has not
instituted a civil action or suit thereon, shall, notwithstanding
the same be not barred by some other statute of limitations
that is applicable thereto, be barred from recovering such
claim of or from the personal representative, or from
thereafter setting off the same against the personal
representative in any action or suit whatever; except that if a
surplus remain after providing for all claims presented in due
time, or on which action or suit shall have been commenced
in due time, and such surplus shall not have been distributed
by the personal representative to the beneficiaries of the
estate, and the claimant prove that he had no actual notice of
the publication to creditors nor knowledge of any
proceedings before the fiduciary commissioner, such creditor
may prove his claim either before the fiduciary commissioner
or by action or suit and have the same allowed out of such
surplus; and, in order that such late claims if proved may be
provided for, the fiduciary commissioner shall reopen his
report if the same has not been returned to the county
commission, or if returned, shall make and return a sup-
plemental report: Provided. That, as to real estate, the
provisions of subsection (b), section one of this article shall
apply.

§44-2-27. When distributees and legatees may be sued on claims;
extent of liability; costs.

(a) Every creditor who has presented his claim to the
fiduciary commissioner before distribution of the surplus by
the personal representative, or before that time has not
instituted a civil action or suit thereon against the personal
representative, may, if not barred by limitation, bring a civil
action against the distributees and legatees, jointly or
severally, at any time within two years after such distribution.
But no distributee or legatee shall be required to pay to
creditors suing by virtue of this section a greater sum than the
value of what was received by him out of the decedent's
estate, nor shall any distributee or legatee be required to pay
to any one creditor a greater proportion of such creditor's
debt than the value of what was received by such distributee
or legatee bears to the total estate distributed. A creditor
suing by virtue of this section shall not recover against such
distributees and legatees the costs of his civil action.
17. (b) Any creditor of a deceased person upon whose estate there is no administration pursuant to subsection (b), section one of this article, may, if not barred by limitation, bring a civil action against the sole beneficiary at any time within two years after recordation of the appraisement.

ARTICLE 3. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.

§44-3-1. Fiduciary commissioners.

§44-3-2. Fiduciary commissioners; powers and duties generally.

§44-3-3. Special fiduciary commissioners.

§44-3-4. Matters that will disqualify fiduciary commissioners.

§44-3-5. Disposition by fiduciary commissioner of inventories.

§44-3-6. Fiduciary commissioner to inspect bonds of fiduciaries.

§44-3-7. When county commission to refer controversies to fiduciary commissioner: rules of procedure.

§44-3-1. Fiduciary commissioners.

The office previously known as commissioner of accounts is hereby abolished. The office of fiduciary commissioner is hereby created and any reference in this code to a commissioner of accounts shall, after the effective date of this section, mean fiduciary commissioner. Fiduciary commissioners shall be attorneys admitted to the practice of law in this state, or shall meet the qualifications of fiduciary supervisors as set forth in article three-a of this chapter: Provided, That persons who are serving as commissioners of accounts upon the effective date of this article shall be continued in office as fiduciary commissioners for not more than one year from the effective date of this article for the purpose of settling estates not settled on the effective date of this article.

The county commission of each county shall appoint not more than four fiduciary commissioners. In counties in which there exists a separate tribunal for police and fiscal purposes, that tribunal shall appoint the fiduciary commissioners. In either case, not more than two of the fiduciary commissioners may be from the same political party.

§44-3-2. Fiduciary commissioners; powers and duties generally.

The fiduciary commissioners shall have general supervision of all fiduciary matters that are referred to them, and of the fiduciaries in charge thereof, and shall make all ex parte settlements of the accounts of such fiduciaries. Fiduciary commissioners shall have power to summon and compel the attendance of witnesses, to swear and examine witnesses, take their depositions and certify their testimony,
and the costs thereof may be charged or expenses of administration of the estate subject to administration.

§44-3-3. Special fiduciary commissioners.
1 When, from any cause, none of the fiduciary commissioners can act as to any matter or matters which may be passed on under the provisions of this chapter, the county commission or tribunal referred to in section one of this article, may appoint some other person to act as to such matter or matters. That person shall have the power and compensation and perform the duties of a fiduciary commissioner. When any fiduciary commissioner resigns, or is removed, the county commission or tribunal may provide for the completion of the matters previously referred to that commissioner.

§44-3-4. Matters that will disqualify fiduciary commissioner.
1 No person shall perform the duties of a fiduciary commissioner in any matter wherein he will be passing upon his own account or acts; nor, where he will be called to pass upon any account or acts with reference to which he served as attorney or counselor; nor shall he be in any manner interested in the fees or emoluments of any fiduciary whose account or acts are before him for any action required by this chapter; nor shall he be surety on the bond of the fiduciary whose accounts are before him, or agent of, or pecuniarily associated with, another who may be such surety; nor shall he be qualified to act in or pass upon any matter before him in which, were he a judge of the circuit court, and the matter were therein pending, he would for any reason be disqualified to serve. Any person who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for each and every violation, be fined not less than fifty nor more than five hundred dollars or imprisoned in the county jail for not more than six months, or punished by both fine and imprisonment at the discretion of the court. Upon conviction he shall also forfeit the office of fiduciary commissioner.

§44-3-5. Disposition by fiduciary commissioner of inventories.
1 The clerk of the county commission shall inspect all appraisements returned to him by fiduciaries, require the same to be executed in quadruplicate and in proper form, and, within ten days after they are respectively approved and recorded by him, deliver one copy thereof to the fiduciary commissioner and mail one copy to the tax commissioner of
West Virginia. Any fiduciary commissioner who fails, refuses or declines to comply with the provisions of this section shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars.

§44-3-6. Fiduciary commissioner to inspect bonds of fiduciaries. Each fiduciary commissioner shall, at least once each month, ascertain from the records of the county commission of his county what estates and fiduciary matters have been referred to him by the county commission, or the clerk thereof since the fiduciary commissioner's last inspection of the records. He shall examine, as to each fiduciary, in any such estate or matter, whether the fiduciary has given bond as the law requires, and, if it appears that he has given no bond, or that his bond is defective, or that the surety thereon has removed from the state, died, or become insolvent, or is bound already in too many other bonds, the fiduciary commissioner shall make report thereof to his county commission at its next term. He shall also have the fiduciary summoned to appear at that term to show cause why he should not give such bond as is required by law. At that term the fiduciary shall be required forthwith to give such bond as is required by law, or shall have his authority revoked. Until a fiduciary has fully administered the estate under his charge, and made his final account, the fiduciary commissioner shall annually make inspections of the bonds of that fiduciary, and make reports thereof. He shall issue a summons whenever the circumstances require, and the commission shall make an order as may be warranted by the facts then determined. An appeal from the order of the county commission shall lie to the circuit court of the county. An appeal may be taken on request of the fiduciary or of the fiduciary commissioner if applied for before the end of the term of the county commission at which the order was made. When an appeal is taken, the clerk of the county commission shall certify all papers in the matter, including a copy of the bond, to the clerk of the circuit court, where the same shall be docketed and proceeded with as other appeals from the county commission.

§44-3-7. When county commission to refer controversies to fiduciary commissioner; rules of procedure. The county commission, whenever any controversy arises
in connection with the probate of any will, or with the
apPOINTment and qualification of personal representatives,
guardians, committees or curators, or with the settlement of
the accounts of any fiduciary, may, of its own motion, or on
the motion of any party thereto, and shall, on the joint
demand of the parties then appearing of record to the
proceeding, refer the matter to a fiduciary commissioner to
hear proof on the same, to make findings thereon, and to
advise the commission on the law governing the decision of
the matter. Any party may except to the commissioner's
finding of fact and law, and the commission shall hear the
case on the commissioner's report and the exceptions thereto,
without taking any additional evidence. In hearing and
reporting on any such matter the fiduciary commissioner
shall be governed as to procedure by the law and practice, so
far as is applicable, governing commissioners in chancery.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND AL­
LOWANCE OF CLAIMS AGAINST ESTATES OF
DECEDE NTS: COUNTY OPTION.

§44-3A-1. County commission to order type of system; findings required;
certain counties required to adopt system herein.

§44-3A-2. Nature of office of fiduciary supervisor and fiduciary com­
mis­sioner; duties of county commission with respect to orders and
findings of such supervisor or commissioner.

§44-3A-3. Office of fiduciary supervisor created; general powers; qualifi­
cations; tests for qualifications; training program; salary; bonds;
violations.

§44-3A-4. Notice of claim; settlement in certain cases.

§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.

§44-3A-6. Claims to be proved by vouchers and affidavits in first instance.

§44-3A-7. Claims to be proved; objections to claims; hearings; funeral
expenses.

§44-3A-8. Claims may be presented before publication of notice.


§44-3A-10. Continuances until all claims and objections passed on.

§44-3A-11. Personal representative to exhibit offsets to claims.

§44-3A-12. How heir or devisee may protect himself against lien on property.

§44-3A-13. No claim barred by statute of limitations to be allowed.

§44-3A-14. Effect of presenting claim as to statute of limitations.

§44-3A-15. Advance payment of certain claims.

§44-3A-16. Personal representative not precluded from commencing action
or suit; setoff in such actions or suits.

§44-3A-17. Fiduciary commissioner to report on claims of creditors; report by
fiduciary supervisor; assets and shares of distributees and
legatees.

§44-3A-18. Apportionment of federal estate taxes; fiduciary to deduct taxes
from shares of beneficiaries.
§44-3A-20. How contingent and unliquidated claims and claims not matured may be provided for.
§44-3A-22. Hearing on report and exceptions; appeal; effect of confirmation.
§44-3A-23. Exceptions to report of fiduciary supervisor or fiduciary commissioner where no previous hearing was had: reference.
§44-3A-25. Report of claims to be recorded.
§44-3A-26. Order in which debts of decedent to be paid.
§44-3A-27. Creditors to be paid in order of classifications; when classes paid ratably.
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§44-3A-29. When claims and legacies may be paid and estate distributed.
§44-3A-30. Accounting for money not disposable at time of settlement; subsequent distribution of such money.
§44-3A-31. When personal representative not compelled to make distribution.
§44-3A-32. When claims not presented and proved barred of recovery from personal representative.
§44-3A-33. When distributees and legatees may be sued on claims; extent of liability; costs.
§44-3A-34. When enforcement of lien to secure claim barred.
§44-3A-35. Fiduciary commissioners.
§44-3A-36. Fiduciary commissioners; powers and duties generally.
§44-3A-37. Special fiduciary commissioners; continuance of present references; compensation.
§44-3A-38. Matters that will disqualify fiduciary commissioners.
§44-3A-39. Disposition by fiduciary commissioner of inventories and accounts of sales.
§44-3A-40. Fiduciary commissioners to inspect bonds of fiduciaries.
§44-3A-41. When county commission to refer controversies to fiduciary commissioner; rules of procedure.
§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.
§44-3A-43. County fiduciary fund.
§44-3A-44. Rules applicable to fiduciary supervisors and fiduciary commissioners; exceptions as to certain counties.

§44-3A-1. County commission to order type of system; findings required; certain counties required to adopt system herein.
1 (a) If the county commission shall fail to act as required in subsection (b) of this section, this article shall take effect in that county sixty days after the effective date of this article.
2 (b) If within the sixty-day period, the county commission makes a preliminary determination, by order entered of record, to proceed without the provisions of this article, the commission shall hold a public hearing as described in this section.
(c) The preliminary determination by the county commission shall include a finding, that shall include, but not be limited to, the following considerations:

1. The relatively expeditious and efficient administration and settlement of estates;
2. The relative cost and convenience to the public and to the estates;
3. Whether the fees provided under article three-a would be insufficient to fund the salary and expenses of a fiduciary supervisor as described in article three-a of this chapter;
4. Whether the county commission and the public interest is served by the availability of the unsupervised administration of estates having sole beneficiaries based upon the local needs of the county;
5. The availability of physical facilities necessary for the administration of this article.

(d) The public hearing shall be held by the county commission within thirty days of the preliminary determination. The commission or tribunal shall cause to be published at least two weeks in advance of this hearing a Class II-0 legal advertisement, as provided in section two, article three, chapter fifty-nine of this code, setting forth the reason for the hearing and the time, place and date thereof; and the fact that the county commission has determined to proceed without the provision of this article, and that the preliminary determination, and the findings therein, can be reviewed and inspected at the office of the county commission.

(e) Within ten days of the hearing, the county commission shall make a final order either confirming or vacating its preliminary determination, which final order shall be based upon information and facts, the comments of the public, and all other available information.

(f) The findings and orders of the county commission made hereunder shall be reviewable by the circuit court of that county in accordance with the writ of certiorari provided for in article three, chapter fifty-three of the code.

(g) Provided, however, That, notwithstanding the provisions of this section, a county commission in any county in this state in which the number of estates settled within the calendar year immediately preceding the effective date of this article exceeds one thousand, shall proceed under this article.
§44-3A-2. Nature of office of fiduciary supervisor and fiduciary commissioner; duties of county commission with respect to orders and findings of such supervisor or commissioner.

1 Except as may be provided in article thirteen of this chapter, the office of fiduciary supervisor and of fiduciary commissioner shall not be construed to vest judicial power in the holder or holders thereof. Such offices are created to aid and assist the county commission in the proper and expeditious performance of the duties of such commissions with respect to the administration of estates and trusts and every order or finding of any fiduciary supervisor or fiduciary commissioner shall be subject to confirmation and approval of the county commission, and be considered for confirmation at the next regular or special session of the commission and be promptly confirmed or, if not confirmed, a date set for hearing thereon. Every order of the fiduciary supervisor or fiduciary commissioner shall remain in effect while awaiting confirmation by the county commission unless the commission provides an alternative means of effectuating the purpose or purposes of the order by providing a lawful alternative thereto. Every fiduciary supervisor and fiduciary commissioner shall have the power to sign and issue process directed to the various parties in any proceeding before them and may summon witnesses, administer oaths and take testimony with respect thereto as may be required to carry out the purposes of this chapter, but they shall apply to the county commission or to the circuit court, as may be appropriate and lawful for any order to compel obedience to any such process or order issued by any such fiduciary supervisor or fiduciary commissioner or to compel the obedience with any of the provisions of this chapter.

§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for qualifications; training program; salary; bond; violations.

(a) There is hereby created within the county commission an office, designated the fiduciary supervisor, who shall be appointed by order of the commission and whose office, with the consent of the clerk of the county commission, shall be housed within the office of such clerk or shall be housed in such other office as the commission may designate. Such
fiduciary supervisor shall at the local option of each such commission, be either a part-time or a full-time employee as may be required by the county commission and shall receive such salary as may be fixed by order of the county commission.

(b) The fiduciary supervisor shall have general supervision of all fiduciary matters and of the fiduciaries or personal representatives thereof and of all fiduciary commissioners and of all matters referred to such commissioners and shall make all ex parte settlements of the accounts of such fiduciaries except as to those matters referred to fiduciary commissioners for settlement.

(c) The county commission shall determine that the person to be appointed as fiduciary supervisor is fully qualified by education or experience, or both, to perform the duties assigned to such office by this chapter or other provisions of this code. Such person shall have the requisite knowledge of the legal issues raised and problems presented by any of the proceedings had and documents filed pursuant to the chapter, the procedures required with respect thereto, the rights of all parties and interested persons with respect to such procedures and the duties to be performed in examining and approving the several and various papers and documents presented to the fiduciary supervisor. The state tax commissioner shall design and supervise a test to be given to all persons selected or appointed as fiduciary supervisor who are not licensed to practice law in this state, which test shall include such matters as the tax commissioner deems appropriate to determine the proficiency, experience, knowledge and skill to perform all of the duties imposed upon or to be imposed upon fiduciary supervisors generally. Such test shall be administered under the authority of the state tax commissioner by such person or persons as he may designate either at the county wherein the fiduciary supervisor is to serve or at such other place as the tax commissioner may designate. The results of the test given to any person or persons shall be kept confidential except as to those persons who have completed the same to the satisfaction of the tax commissioner and except as to those persons who may desire their individual test results to be made public. Each county commission shall be notified as to the names of those persons who have satisfactorily completed such test. The tax commissioner shall provide for the
uniformity of the test to be given and for grading and evaluating the results thereof.

The tax commissioner shall at least annually conduct a training program for fiduciary supervisors who are not licensed to practice law in this state. The training program shall be conducted at such times and places and consist of such subjects as the tax commissioner may determine. All fiduciary supervisors who are not licensed to practice law shall be required to attend such training programs and those supervisors as are so licensed may attend.

(d) The fiduciary supervisor shall give bond with good security to be approved by the county commission in an amount equal to the amount posted by the clerk of the county commission in the county wherein such fiduciary supervisor is to serve.

(e) Neither the fiduciary supervisor nor any person to whom the duties of fiduciary supervisor have been delegated, in whole or in part (excluding fiduciary commissioners) shall engage in the practice of law, for compensation or otherwise, with respect to the administration of any estate or trust wherein the fiduciary thereof has qualified in his county or with respect to any proceedings before him or which are or may be referred to a fiduciary commissioner in his county. Nor shall a fiduciary commissioner or special fiduciary commissioner engage in the practice of law with respect to matters referred to him as such commissioner. Any fiduciary supervisor or person to whom any of the functions or duties of the fiduciary supervisor have been delegated or fiduciary commissioner or special fiduciary commissioner who so engages in the practice of law contrary to the limited prohibitions of this section, shall be removed from his office or employment and, in addition thereto, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars.

§44-3A-4. Notice of claim; settlement in certain cases.

1 The fiduciary supervisor shall at least once a month as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, cause to be published in a newspaper of general circulation within the county wherein letters of administration have been granted, a notice substantially as follows:
NOTICE OF FILING OF ESTATE ACCOUNTS

To the Creditors and Beneficiaries of the within named deceased persons:

I have before me the estates of the following deceased persons and the accounts of the fiduciaries of their respective estates:

Name of Decedent: ..........................................................

Name of Fiduciary: ..........................................................

Address: ........................................................................

Name of Decedent: ..........................................................

Name of Fiduciary: ..........................................................

Address: ........................................................................

Name of Decedent: ..........................................................

Name of Fiduciary: ..........................................................

Address: ........................................................................

All persons having claims against the estate(s) of any of the above-named deceased persons whether due or not, are notified to exhibit the same with vouchers thereof, legally verified, to the fiduciary of such deceased person as shown herein within seventy-five days of the first publication hereof or not later than the ....... day of ........., .........; or if not so exhibited to such fiduciary by that date to exhibit the same at the office of the undersigned fiduciary supervisor at the address shown below within one hundred twenty days of the first publication of this notice or not later than the ......... day of ........., .........; otherwise any or all such claims may by law be excluded from all benefits of said estate(s). All beneficiaries of said estate(s) may appear either before the above-named fiduciary by the date first above shown or thereafter before the undersigned fiduciary supervisor by the date last above shown to examine said claims and otherwise protect their respective interests.

Given under my hand this ........... day of ........., ...........

..........................................................

Fiduciary Supervisor

..........................................................County, W. Va.

All such claims are to be filed with the appropriate fiduciary at the address shown in such notice within seventy-five days of the date of the first publication of such notice or with the fiduciary supervisor within one hundred twenty days of such date.

Subject to the provisions of section five of this article, at the
end of the one hundred twenty-day period set forth in such notice, the fiduciary supervisor may proceed with supervision of all estates referred to him for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees and any and all other matter or matters necessary and proper for the settlement of the estate, including, but not limited to, his recommendations concerning the approval of the fees of any fiduciary commissioner to whom the estate may have been referred, determination that inheritance taxes, if any, occasioned by the death of the decedent or returnable by reason thereof have been returned upon such estate and such taxes have been paid or such payment provided for and whether a release therefor has been issued by the proper authority, all matters required by section nineteen of this article and all other matters deemed proper by him.

§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.

1 When the personal representative shall deliver to the fiduciary supervisor, the appraisement required by section fourteen, article one of this chapter, and is notified as to the completeness thereof, the fiduciary supervisor shall, unless otherwise ordered by the county commission, proceed to receive claims and proceed to supervise settlement of the estate.

The county commission shall not remove the estate from supervision by the fiduciary supervisor and no reference to a fiduciary commissioner shall be made if the appraisement, properly completed, shows the total value of all assets included in the estate which are subject to administration (exclusive of real property, unless the will, if any, requires administration thereof) to be twenty-five thousand dollars or less: Provided, That if a dispute arises as to a matter of law or fact, then the matter may be referred to a fiduciary commissioner for the sole purpose of taking evidence as to making a recommendation as to the disputed facts and applicable law in such dispute.

The county commission shall not refer any estate to a fiduciary commissioner:

(a) If the personal representative is also the sole beneficiary of the estate; nor
(b) If the surviving spouse is the sole beneficiary of the estate unless the spouse requests such reference; nor

(c) (1) If all the beneficiaries of the estate advise the fiduciary supervisor by verified writing that no dispute is likely to arise with respect to the administration of the estate; and (2) it appears to the county commission or to the fiduciary supervisor thereof that there are ample assets in the estate to satisfy all claims of creditors and others against the estate and that proper distribution thereof will be made, including the payment of all taxes due thereon; and (3) if the personal representative agrees thereto; nor

(d) If the county commission or fiduciary supervisor, subject to the approval of the county commission, finds that there are ample assets in the estate to satisfy all claims of creditors and others against the estate and that proper distribution thereof will be made including, but not limited to, the payment of all taxes due thereon and that no disputed question of law or fact has arisen or is likely to arise.

The commission shall, before making any reference to a fiduciary commissioner, find by its order that none of the prohibitions contained in this section obtains: Provided, That in any case in which a reference would otherwise be prohibited, the commission may refer a matter for the sole purpose of resolving a disputed question of law or fact or may, if the matter can be resolved expeditiously, permit the fiduciary supervisor to conduct the necessary proceedings and to prepare a recommendation on such disputed question.

In the event reference is made because of the failure to meet any of the conditions in the preceding paragraph which preclude reference to a fiduciary commissioner, such reference may be made generally or for the sole purpose of determining those matters in dispute. In any event, such reference shall be withdrawn at any time upon the settlement or determination or resolution of the reason or reasons giving rise to such reference or at any other time deemed appropriate by the county commission or by the fiduciary supervisor, subject to the approval of the county commission. If no such reference is made and it is later found that a dispute or other condition has arisen which makes reference to a fiduciary commissioner necessary, then reference to a fiduciary commissioner may be made, either generally or for the settlement, determination or resolution of the dispute or condition and shall, in any event, be later withdrawn at any
time required by this section or deemed appropriate by the
fiduciary supervisor with the approval of the county
commission.

In counties where there are two or more such fiduciary
commissioners, the estates of decedents shall be referred to
such commissioners in rotation, in order that, so far as
possible, there may be an equal division of the work.

§44-3A-6. Claims to be proved by vouchers and affidavits in first
instance.

Every claim against the estate of a decedent shall be
itemized, accompanied by a proper voucher stating the character
of the claim, whether open account, note, bond, bill, writing
obligatory, judgment, decree, or other evidence of debt, and the
amount thereof, and from what date and on what items interest
runs and at what percent per annum, and stating further that the
claim is just and true, and that the creditor, or any prior owner of
the claim, if such there was, has not received any part of the money
stated to be due, or any security or satisfaction for the same, except
what is credited. The vouchers for a judgment or decree shall be an
abstract thereof; for a specialty, bond, note, bill of exchange,
writing obligatory, or other instrument, shall be the instrument
itself, or a true copy thereof, or proof of the same in case the
instrument be lost; and for an open account, an itemized copy of the
account. This section shall not apply to taxes.

§44-3A-7. Claims to be proved; objections to claims; hearings;
funeral expenses.

Every claim so itemized, so accompanied by proper
vouchers, and so verified, shall be taken to be proved, and
shall be allowed, unless before the fiduciary supervisor shall
make up his report of claims, the personal representative or a
disturnee, or a legatee, or, in the case of estates that appear
to be insolvent, a creditor, shall file before such clerk a
counter affidavit, denying the claim in whole or in part. When
said counter affidavit is so filed the fiduciary supervisor shall
forthwith refer the matter to a fiduciary commissioner, the
provisions of section five of this article notwithstanding, who
shall within ten days of the receipt of the reference fix a time
and place for hearing evidence for and against such claim and
give reasonable notice of such time and place to the claimant,
the party objecting, and the personal representative. If such
15 fiduciary commissioner, having held such hearing, does not
16 allow any such claim, the claimant shall pay the expenses of
17 having the testimony adduced at such hearing recorded
18 and/or transcribed. The commissioner, in the exercise of his
19 sound discretion, may require that the claimant post a bond
20 or other security sufficient to pay the estimated cost of having
21 such testimony recorded and transcribed as a condition
22 precedent to holding such hearing. If such claim, having been
23 disallowed by the commissioner, subsequently shall be
24 allowed as a claim against the estate, the claimant shall be
25 entitled to recover from the estate the expenses so paid.
26 Claims for funeral expenses shall be made and determined in
27 the same manner as any other claims. If such estate is referred
28 to a fiduciary commissioner for the sole purpose of
determining the allowance of a claim and for no other
29 purpose, the order of reference to such commissioner shall be
30 withdrawn upon receipt of the commissioner's report with
31 respect thereto. If such estate in its entirety be referred to
32 such fiduciary commissioner then such commissioner shall
33 retain general supervision of the matter until such time as he
34 would otherwise be relieved of the same as provided in
35 section four of this article.

§44-3A-8. Claims may be presented before publication of notice.
1 Claims against any decedent's estate may be filed with or
2 presented to the fiduciary supervisor, at any time following
3 the qualification of the personal representative,
4 notwithstanding the notice to creditors shall not have been
5 published previously to such filing or presentation.

1 Whenever at the death of any person there shall be a
2 contingent or unliquidated claim against his estate, or an
3 outstanding bond, recognizance or undertaking upon which
4 the deceased shall have been principal or surety or
5 indemnitor, and on which at the time of his death the liability
6 is still contingent or unliquidated, the claimant or the surety
7 shall have the right to file with the fiduciary supervisor at the
8 time provided for in the notice, proof of his claim in the same
9 manner as other claims, stating in his affidavit the facts upon
10 which such contingent or unliquidated liability is based and
11 the probable amount thereof. When so filed there shall be no
12 distribution of the assets of the estate, except as otherwise
13 provided in this article, without the reservation of sufficient
moneys to pay, when the amount is finally determined, such
contingent or unliquidated claim, or a proportion thereof
equal to what is paid to other creditors of the same class. If
such liability becomes fixed before the fiduciary supervisor
or fiduciary commissioner, as may be, completes his report,
then evidence of the same may be filed with such clerk or
commissioner in lieu of the contingent claim herein provided
for, and such claim as fixed shall be a debt of the estate.

§44-3A-10. Continuances until all claims and objections passed
on.
1 The fiduciary supervisor may adjourn from time to time the
2 hearing for the presentation of claims or the fiduciary
3 commissioner may likewise adjourn from time to time the
4 hearings for proof of disputed claims until all the presented
5 claims and the objections to any claims, as the case may be,
6 shall be fully heard and passed on.

§44-3A-11. Personal representative to exhibit offsets to claims.
1 When a creditor against whom the deceased had any claim
2 or claims shall present a claim the personal representative
3 may exhibit any offset, if the same be such as has survived,
4 that he may have to such claim, and the fiduciary supervisor
5 or fiduciary commissioner, as may be, shall ascertain and
6 allow the balance against or in favor of the estate.

§44-3A-12. How heir or devisee may protect himself against lien
on property.
1 Any heir or devisee entitled to have any lien on the real
2 estate that descended or was devised to him discharged out of
3 the personal estate, or any legatee entitled to have a lien on
4 specific personality discharged out of the other personality,
5 may, if the creditor holding any such lien fails to present and
6 prove his claim, present and prove such claim, and have the
7 same allowed or provided for, within the same time, to the
8 same extent, and by the same means as such creditor.

§44-3A-13. No claim barred by statute of limitations to be
allowed.
1 No claim barred by any statute of limitations shall be
2 allowed against the estate of a decedent.

§44-3A-14. Effect of presenting claim as to statute of limitations.
1 The filing or presentation of any claim against the estate of
2 a decedent shall, so far as the running of any statute of
limitations is involved, have the same effect as the institution of action on such claim.

§44-3A-15. Advance payment of certain claims.

The fiduciary supervisor or fiduciary commissioner to whom the matter has been generally referred may authorize, and the personal representative may make, payment of funeral expenses, claims of physicians and nurses for services rendered during the last illness of the decedent, and accounts of druggists, hospitals and sanitariums for articles furnished and services rendered during the same period, to the extent that any of the same are preferred; also of debts due the United States, debts due the state of West Virginia, and taxes, in advance of the determination of other claims.

§44-3A-16. Personal representative not precluded from commencing action or suit; setoff in such actions or suits.

Nothing in this article contained shall be construed to prevent any personal representative, when he shall think it necessary, from commencing any action against any person, or from prosecuting to final judgment any action commenced by the deceased in his lifetime, if the cause of such action survives, for the recovery of any debt or claim, or from having execution on any judgment. The defendant in any such action shall, notwithstanding he may have already filed his claim before the fiduciary supervisor, set off by way of counterclaim any claim he may have against the deceased, if proper to be allowed as a counterclaim; and if final judgment shall be rendered in favor of the defendant, the same shall be certified by the clerk of the court rendering it to the fiduciary supervisor or fiduciary commissioner before whom the estate of the deceased is pending, and the amount thereof shall be allowed in the same manner as other claims against such estate filed and proved before such clerk or commissioner.

§44-3A-17. Fiduciary commissioner to report on claims of creditors; report by fiduciary supervisor; assets and shares of distributees and legatees.

If an estate has been referred generally to a fiduciary commissioner, after the presentation of all claims and after the completion of the hearings for the proof for and against any disputed claims, but not later than ten months from the qualification of the personal representative, the
commissioner shall prepare a report of all claims, disputed or otherwise, against the estate, showing in such report all such claims presented, disputed, exhibited in offset, or certified to the commissioner by the fiduciary supervisor or by any court, and stating as to each claim how much was allowed and how much disallowed, together with the final balance, whether in favor of the creditor or the estate. The commissioner shall also show in such report what assets are in the hands of the personal representative, and shall designate how the same shall be applied to the payment of debts and claims; also in what order of priority the claims shall be paid and also what sum shall be reserved to pay contingent or unliquidated claims and claims not matured, or a proportion of any such equal to what is allowed to other creditors of the same class, when payment of such claims shall become proper. In the event the estate is not referred to any such fiduciary commissioner, then a report shall be prepared by the fiduciary supervisor which shall contain all such information as is herein required to be included in the report filed by such commissioner. In lieu of a formal report of claims, the fiduciary supervisor or fiduciary commissioner may prepare an abbreviated or condensed report which summarizes the status of claims and the entitlements of the legatees or beneficiaries and identifies other matters that require completion in the particular estate before the estate is closed.

Any report or abbreviated report, whether by the fiduciary supervisor or fiduciary commissioner, shall show what persons are entitled to share in the estate as legatees, and as such in what property or amounts; or as distributees, and as such in what proportions.

§44-3A-18. Apportionment of federal estate taxes; fiduciary to deduct taxes from shares of beneficiaries.

(a) For the purposes of this section the term “persons interested in the estate” shall include all persons, firms and corporations who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of a decedent, or any benefit whatsoever with respect to any such property or interest, whether under a will or intestacy, or by reason of any transfer, trust, estate, interest, right, power or relinquishment of power, taxable under any estate tax law of the United States heretofore or hereafter enacted.
(b) Whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding, that an executor, administrator, curator, trustee or other person acting in a fiduciary capacity, has paid an estate tax levied or assessed under the provisions of any estate tax law of the United States heretofore or hereafter enacted, upon or with respect to any property required to be included in the gross estate of a decedent under the provisions of any such law, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues. Such apportionment shall be made in the proportion that the value of the property, interest or benefit of each such person bears to the total value of the property, interests and benefits received by all such persons interested in the estate, except that in making such proration each such person shall have the benefit of any exemptions, deductions and exclusions allowed by such law in respect of such person or the property passing to him; and except that notwithstanding the preceding provisions of this sentence in cases where a trust is created, or other provision made whereby any person is given an interest in income, or an estate for years, or for life, or other temporary interest in any property or fund, the tax on both such temporary interest and on the remainder thereafter shall be charged against and paid out of the corpus of such property or fund without apportionment between remainders and temporary estates.

(c) In all cases in which any property required to be included in the gross estate does not come into the possession of the executor, administrator or other fiduciary as such, he shall be entitled, and it shall be his duty, to recover from whomever is in possession, or from the persons interested in the estate, the proportionate amount of such tax payable by the persons interested in the estate with which such persons interested in the estate are chargeable under the provisions of this section.

(d) No executor, administrator or other person acting in a fiduciary capacity shall be required to transfer, pay over or distribute any fund or property with respect to which a federal estate tax is imposed until the amount of such tax or taxes due from the devisee, legatee, distributee or other person to whom such property is transferred, is paid to such fiduciary, or, if the apportionment of tax has not been
But it is expressly provided that the foregoing provisions of this section are subject to the following qualification, that none of such provisions shall in any way impair the right or power of any person by will or by written instrument executed inter vivos to make direction for the payment of such estate taxes, and to designate the fund or funds or property out of which such payment shall be made, and in every such case the provisions of the will or of such written instrument executed inter vivos shall be given effect to the same extent as if this section had not been enacted.

(f) The provisions of this section shall be applicable to estates of decedents dying after the enactment of this section.


(a) At any time after the expiration of the period for filing claims, the fiduciary supervisor may proceed with summary settlement under this section if the estate has not been referred to a fiduciary commissioner or if the estate, having been referred to a fiduciary commissioner generally or for a specific reason, has been withdrawn and placed before the fiduciary supervisor for settlement.

The fiduciary supervisor shall require that the personal representative, or the personal representative may on his own motion, timely file a proposed settlement which shall include:

1. Proof of payment of all claims filed against the estate or proof of such payment has been provided for;
2. Verification under oath that the personal representative, after exercise of due diligence, knows of no other claims against the estate;
3. Verification and accounting of any income received by the personal representative from the benefit of the estate;
4. Provisions for the payment of all taxes due from the estate or proof that all such taxes have been paid;
5. A proposed plan of distribution; and
6. Any and all other information deemed appropriate by the fiduciary supervisor.

(b) The provisions of this section to the contrary notwithstanding, any claim paid by the personal representative to any creditor or beneficiary within such one hundred twenty days, shall not abrogate in any way, the liability of the personal representative under the provisions of
sections twenty-six, twenty-seven or twenty-eight of this article.

(c) At the time such proposed settlement is filed, or prior thereto, the personal representative shall prepare and furnish to the fiduciary supervisor, and such supervisor shall review, a return of all inheritance taxes due the state, pursuant to article eleven, chapter eleven of this code, by reason of the death of the decedent, who shall approve any proper return filed with him.

Such supervisor shall compare the proposed settlement with any proper inheritance tax return and with the appraisement and any and all other documents deemed appropriate by the supervisor in order to investigate the propriety of such proposed settlement.

(d) The supervisor may, if he deems it appropriate, reject such settlement and give notice in writing to the personal representative of the matters disapproved and the reasons therefor and fix a time, no later than forty-five days after the date of such notice, for the personal representative to amend the proposed settlement. The personal representative may, within the time specified by the supervisor, amend the settlement, otherwise satisfy the supervisor of the propriety of all or part of such proposed settlement, or insist on the propriety thereof, with or without amendment thereof.

(e) The supervisor shall, after he is satisfied as to the propriety of the settlement or, after the period set by him for amendment thereof has expired, prepare a report of his recommendations to the county commission with respect thereto, and his findings and determinations, which shall include his findings with respect to:

(1) A proper appraisement has been filed which conforms to the requirements of section fourteen, article one of this chapter;

(2) The claims of creditors have been paid or have been properly provided for in proper order of preference and proportions;

(3) A proper inheritance tax return has been made and the taxes due thereon paid or that payment has been provided for;

(4) Any real property in this state owned by the decedent at the time of his death has been properly transferred upon the books of the assessor or that the assessor has been notified of the facts and circumstances sufficient to cause the
(5) A proper distribution to the parties entitled thereto has been proposed by the personal representative of the estate;

(6) Minors and other persons under disability who own or are entitled to an interest in the estate are or have been protected; and

(7) Any other matter or matters deemed pertinent by the fiduciary supervisor.

(f) The fiduciary supervisor shall give notice of such proposed settlement and findings to the state tax commissioner, all creditors whose claims have not been fully paid or otherwise satisfied and all beneficiaries which notice shall include a copy of the proposed settlement and shall advise that the subject estate shall be settled accordingly thereto thirty days following the date of such notice. In addition, on the first Monday of the next month, the supervisor shall publish as a Class I-0 legal advertisement, a notice that the accounts of the personal representative are before him for approval.

Such notice shall be divided into two sections: Settlements approved and settlements not approved and notice of the date and time that the names shall be presented to the county commission, which date shall not be more than fifteen days after such publication. Such advertisement shall be sufficient if substantially as follows:

NOTICE OF PROPOSED SETTLEMENT OF ESTATES

To the Creditors and Beneficiaries of the within named deceased persons:

I have before me the proposed final settlements of the estates of the following deceased persons, which shall be presented to the county commission of ................., County, at the Courthouse thereof, in the City of ............., on the ............. day of ............., ...., at .... o'clock, .... M., which settlements have been presented to me by the fiduciary of such estates and which proposed settlements I have either approved or have not approved as indicated below:

APPROVED

Name(s) of Decedent: ...........................................

.........................................................

.........................................................
Any person having any interest in the estate of any such deceased person, may appear before the county commission at the time and place hereinafore specified and thereupon protect his interests as they may appear or else may be forever thereafter barred from asserting such interests.

Given under my hand this ....... day of ........, .......

Fiduciary Supervisor

........................................ County, W. Va.

(g) Any person may examine such proposed settlement in the office of the fiduciary supervisor and file objection thereto at or prior to the time set by such notice for presentation thereof to the county commission. The commission shall proceed to hear the presentation of such proposed settlement and findings and hear interested parties, if any appear, and approve, modify and approve, or refuse to approve such proposed settlement and the findings of the fiduciary supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner generally for supervision or for the purpose of the resolution of any disputed matter.

(h) If no dispute or objection to the proposed settlement has arisen, the fiduciary supervisor shall direct the personal representative to conclude the affairs of the estate as outlined in the proposed settlement or amended proposed settlement. Upon receipt by such supervisor of evidence to his satisfaction that all claims, including claims of beneficiaries have been satisfied and that all taxes have been paid, he shall submit his report of the proposed or amended proposed settlement to the county commission for ratification, confirmation and approval as otherwise provided by law.

§44-3A-20. How contingent and unliquidated claims and claims not matured may be provided for.

1 The fiduciary supervisor or fiduciary commissioner, as may be, in his report on claims shall direct the personal representative to withhold from distribution to beneficiaries sufficient assets to take care of such contingent and unliquidated claims and claims not matured as shall be
presented and proved or a proportion thereof equal to what is paid to other creditors of the same class, and such assets shall be so withheld until such contingent liability becomes fixed, or such unliquidated liability becomes liquidated, or until such claim not matured matures, as the case may be, at which time such assets shall be disbursed or distributed as the fiduciary supervisor or fiduciary commissioner in his report may have designated and the circumstances may require. But in any case where there are sufficient assets to pay all liquidated claims against any estate, any legatee or distributee of the estate shall be entitled to be paid his or her share of the full surplus of the estate, after payment of, or provision for, all liquidated claims, both those matured and those not matured has been made, upon such legatee's or distributee's giving to the personal representative a bond, executed by himself or some other person, with sufficient security, to be approved by the county commission, or the fiduciary supervisor thereof during any recess thereof, conditioned to refund a due proportion of any unliquidated or contingent debts or demands which may afterwards appear against the decedent or become liquidated or have their liability fixed, and of the costs attending their recovery. Such bond shall be filed in the office of the clerk of the county commission where probate of the will or administration of the estate was had, and recorded by such clerk in the record of bonds. After the giving of any such bond or bonds, creditors holding unliquidated or contingent debts and demands shall, as to the estate distributed by virtue of the giving of such bond or bonds, look only to such bond or bonds for the payment of such debts and demands.

§44-3A-21. Exceptions to fiduciary supervisor's or fiduciary commissioner's report; return of report.

After preparing his report of claims the fiduciary supervisor or the fiduciary commissioner, as may be, shall give notice thereof, in writing, delivered personally or by mail, to all parties interested or their attorneys, and hold the report and the evidence taken in connection therewith in his office for ten days for the examination of or by all parties interested. Any party may inspect such report and evidence and file exceptions thereto before said supervisor or commissioner; and such supervisor or commissioner, in all cases, shall return with his report all the evidence taken in connection
with any claim listed in such report, and the exceptions, if
any, taken to the report, and shall submit such remarks upon
the exceptions as he may deem pertinent. Such report shall
include the same findings as are required to be made by the
provisions of section nineteen of this article. After the
expiration of such ten days such supervisor or commissioner
shall return the report, evidence, exceptions and remarks to
the county commission, and until the report is acted upon by
the commission it shall be subject to further exceptions by
the same or other parties interested.

§44-3A-22. Hearing on report and exceptions; appeal; effect of
confirmation.
A hearing on the report of claims returned by the fiduciary
supervisor or fiduciary commissioner shall be had at the first
term of the county commission occurring not earlier than ten
days after its return. If there be no exceptions to such report it
shall be confirmed, but if excepted to the commission shall
pass upon the exceptions and make its order thereon, without
hearing or receiving any new evidence, but if good cause be
shown for the introduction of further proof regarding any
matter contained in such report, the report shall be referred
back to the fiduciary commissioner for the taking of further
proof and the making of a supplemental report. An appeal
from the decision of such county commission on such report
and exceptions and on the supplemental report and
exceptions, if there be such supplemental report, may,
without any formal bill of exceptions, be taken to the circuit
court of the county. The appeal shall be tried and heard in the
circuit court, or before the judge thereof in vacation, on the
record made before the commissioner and the county
commission. After the report of the commissioner on the
claims against the estate of any decedent has been confirmed
by the county commission, or the circuit court on appeal, or
corrected and confirmed after appeal, the same shall be
forever binding and final.

§44-3A-23. Exceptions to report of fiduciary supervisor or
fiduciary commissioner where no previous
hearing was had; reference.
In all cases wherein exception has been taken to the report
of claims returned by the fiduciary supervisor, the
commission at the time of the hearing provided for in section
twenty-two of this article shall refer the matter to a fiduciary
commissioner for the taking of evidence upon the matter or matters excepted to. Such commissioner shall within ten days of the receipt of the reference fix a time and place for the hearing and taking of evidence upon the matter or matters excepted to and shall give reasonable notice of the time and place of such hearing to all persons interested therein. Such commissioner shall make his report as in other cases and if exception be taken to such commissioner’s report the commission may proceed as provided in section twenty of this article to pass upon such exceptions and make its order thereon without hearing or receiving any new evidence unless good cause be shown with the introduction of further proof in which case the matter shall be referred back to the commissioner for the taking of further evidence and the making of a supplemental report and appeal from the decision of the commission shall be in the manner provided for in said section twenty-two.

If an exception be taken to a report of a fiduciary commissioner wherein no evidence had been previously taken, the matter shall be rereferred to such commissioner who shall proceed thereon as provided for in section twenty-two of this article. It shall be the duty of the fiduciary supervisor to compel timely compliance with the provision of this chapter, including any continuances granted with respect to any matter. Any such continuance which would extend any time limitation imposed by law beyond its lawful limit shall not be granted. The fiduciary supervisor or fiduciary commissioner may petition the circuit court to compel compliance with any of the provisions of this chapter.


On the last day of January and July of each year every fiduciary commissioner and special fiduciary commissioner shall file with the fiduciary supervisor a list of all estates referred to him since the effective date of this section, either generally or for a limited purpose in which any appraisement or other document required to be filed with him in a specified time has not been timely filed, stating the document whose filing is delinquent and the date the same was due to be filed: Provided, That the commissioner shall omit from such list any estate and any document for whose filing a proper continuance has been granted.

On the fifth day of January and July of each year the
fiduciary supervisor shall file with the county commission a
like list of estates referred to him since the effective date of
this section in which the filing of any paper is delinquent, and
embrace therein the lists required to be filed with him on the
first day of such month by the various commissioners. In the
report filed the fifth day of July of each year the fiduciary
supervisor shall further include in the report a list of all
estates referred to him since the effective date of this section
which have not been duly closed and in which no progress, or
in his opinion, unsatisfactory progress, has been made toward
settlement, for any cause, within the preceding twelve
months.

The county commission, after consultation with the
fiduciary supervisor shall take care to require prompt
disposition of all matters and causes reported to it by the
semiannual reports required herein.

In addition, the fiduciary supervisor and the fiduciary
commissioners, shall be empowered, and where appropriate,
shall on their own motion, petition the circuit court to compel
compliance with the provisions of this chapter, in the same
manner and to the same extent heretofore provided in the
case of commissioners of accounts, or by any other proper
proceeding.

§44-3A-25. Report of claims to be recorded.

The report of claims, and the supplemental report of claims,
if there be one, when confirmed by the county commission,
shall be recorded by the clerk of the county commission in his
office.

§44-3A-26. Order in which debts of decedent to be paid.

When the assets of the decedent in the hands of his personal
representative, after the payment of charges of
administration, are not sufficient for the satisfaction of all
demands against him, they shall be applied in the following
order:

(a) To the payment of funeral expenses, to an amount not
exceeding six hundred dollars;

(b) To the claims of physicians, not exceeding one
hundred dollars, for services rendered during the last illness
of the decedent; and accounts of druggists, not exceeding the
same amount, for articles furnished during the same period;
and claims of professional nurses or other person rendering
service as nurse to the decedent, at his request or the request
of some member of his immediate family, not exceeding the
same amount, for services rendered during the same period;
and accounts of hospitals and sanitariums, not exceeding the
same amount, for articles furnished and services rendered
during the same period;
(c) To debts due the United States;
(d) To debts due this state;
(e) To taxes and levies assessed upon the decedent
previous to his death;
(f) To debts due as trustee for persons under disabilities,
as receiver or commissioner under order of any court of this
state, as personal representative, guardian, committee or
other fiduciary, where the qualification was in this state;
(g) To the balances on any items listed in subdivisions (a)
and (b) hereof but only to the extent that they are determined
by the fiduciary supervisor or fiduciary commissioner, as
may be, to be reasonable in amount and to have been
necessarily incurred, and to all other demands except those in
the next class;
(h) To voluntary obligations.

§44-3A-27. Creditors to be paid in order of classification; when
classes paid ratably.

Notwithstanding the provisions of section nineteen of this
article, no payment shall be made to creditors of any one class
until all those of the preceding class or classes shall be fully
paid; and when the assets are not sufficient to pay all the
creditors of any one class, the creditors of such class shall be
paid ratably; but a personal representative who, after twelve
months from his qualification, pays a debt of his decedent,
shall not thereby be personally liable for any debt or demand
against the decedent of equal or superior dignity, whether it
be of record or not, unless before such payment he shall have
notice of such debt or demand by action, suit or presentation
thereof to the commissioner of accounts within the time
allowed by law.

§44-3A-28. When personal representative not liable for funds
distributed.

If any personal representative after one year from the
qualification of the first executor or administrator of the
estate, and after the report of claims has been made by the
probate clerk or probate commissioner, as may be, and been
confirmed by the county commission, and after withholding
such funds as the fiduciary supervisor or fiduciary commissioner shall direct to meet any contingent and unmatured claims and claims in action or suit, shall pay any legacy given by the will, or distribute any of the estate of his decedent in accordance with the probate clerk's or probate commissioner's report as confirmed, such personal representative shall not, on account of what is so paid or distributed, be personally liable for any debt or demand against the decedent, whether it be of record or not, unless, within the time fixed for presentation of claims under the provisions of sections four and nineteen of this article or for suing thereon, such claim was duly and timely presented or action or suit thereon commenced and process served on such personal representative.

§44-3A-29. When claims and legacies may be paid and estate distributed.

After the report of the fiduciary supervisor or the fiduciary commissioner on the claims against the estate of any decedent has been confirmed as aforesaid, and after one year from the time of the qualification of the first executor or administrator shall have elapsed, or four months in the case of settlements made pursuant to section nineteen of this article, the personal representative may pay the claims allowed by the commissioner against the decedent's estate or certified to him by courts wherein judgments or decrees against the estate have been rendered, according to the order of payment set forth in such supervisor's or commissioner's report, and pay legacies and distribute the surplus among the parties entitled thereto in the amounts and proportions determined by such supervisor or commissioner in his report as confirmed, withholding such sum as such report as confirmed states to be necessary for the payment of any contingent, unliquidated or disputed claims, or claims not matured, or the proportions of any such equal to what is allowed to other creditors of the same class, and upon the determination from time to time of any such claims further payments and distributions may be made as the circumstances require. If the personal representative shall fail or refuse to pay claims and make distribution within three months following the time when he may legally do so, and no appeal has been taken from the order of confirmation of the report on claims, any party interested may institute an action
against such personal representative to compel payment and distribution as provided by section twenty, article four of this chapter.

Any other provisions of this chapter to the contrary notwithstanding, including the provisions of this section, neither a personal representative nor his surety shall be liable for the amount of any claim or distributive share made within the period of a year from the time of qualification if the estate has been finally settled pursuant to the provisions of section nineteen of this article and, notwithstanding any other provision of this chapter, every estate may be settled prior to the expiration of one year if such settlement complies in all respects with the provisions of said section nineteen of this article.

§ 44-3A-30. Accounting for money not disposable at time of settlement; subsequent distribution of such money.

Notwithstanding any other provision of law, if an estate is otherwise ready for final settlement and the personal representative holds any sum or sums of money necessary for the payment or distribution of any contingent, unliquidated, unmatured or disputed bequest or claim, which cannot be paid or distributed because the whereabouts of the claimant or distributee are unknown, or cannot be paid or distributed for any other reason, he may, with the consent of the fiduciary supervisor or fiduciary commissioner to whom the estate has been referred, pay such sum or sums to the general receiver of the circuit court in the county in which the estate is being administered. Any such payment, together with a receipt therefor, shall be reflected and shown in such supervisor's or commissioner's final report. After said report is confirmed by the county commission, such personal representative shall not be personally liable for any such aforesaid bequest or claim.

Any person entitled to any funds paid to a general receiver of a circuit court pursuant to the provisions of this section may petition the circuit court in a summary proceeding for an order directing the distribution of such funds. Any person believed to have any claim to or interest in said funds shall be made a party defendant to such petition and shall be given such notice of any hearing thereon as the circuit court may direct. The circuit court shall enter an order directing the
distribution of said funds to the person or persons entitled thereto. The costs of said proceedings shall be paid from the funds.

§44-3A-31. When personal representative not compelled to make distribution.

A personal representative shall not be compelled to pay any legacy given by the will, or make distribution of the estate of his decedent, until after a year from the date of the order conferring authority on the first executor or administrator of such decedent, or until four months following such order in the case of settlements made pursuant to section nineteen of this article and not then in either event unless the report of claims against the estate made by the fiduciary supervisor or fiduciary commissioner has been confirmed and no appeal has been taken from the order of confirmation.

§44-3A-32. When claims not presented and proved barred of recovery from personal representative.

Every person having a claim against a deceased person, whether due or not, who shall not, when notice to creditors has been published as prescribed in this article, have presented his claim on or before the one hundred twenty-day time period fixed in such notice, or before that time have instituted an action thereon, shall, notwithstanding the same be not barred by some other statute of limitations that is applicable thereto, be barred from recovering such claim of or from the personal representative, or from thereafter setting off the same by way of counterclaim or otherwise against the personal representative in any action whatever; except that if a surplus remain after providing for all claims presented in due time, or on which action shall have been commenced in due time, and such surplus shall not have been distributed by the personal representative to the beneficiaries of the estate, and the claimant prove that he had no actual notice of the publication to creditors nor knowledge of the proceedings before the fiduciary supervisor or fiduciary commissioner, such creditor may prove his claim either before such supervisor or commissioner or by action and have the same allowed out of such surplus; and, in order that such late claims if proved may be provided for, the fiduciary supervisor or fiduciary commissioner shall reopen his report if the same has not been returned to the county commission, or if returned shall make and return a supplemental report.
§44-3A-33. When distributees and legatees may be sued on claims; extent of liability; costs.

Every creditor who shall not have presented his claim to the fiduciary or the fiduciary supervisor before distribution of the surplus by the personal representative, or before that time shall not have instituted an action thereon against the personal representative, may, if not barred by limitation, bring his action against the distributees and legatees, jointly or severally, at any time within two years after such distribution. But no distributee or legatee shall be required to pay to creditors suing by virtue of this section a greater sum than the value of what was received by him out of the decedent's estate, nor shall any distributee or legatee be required to pay to any one creditor a greater proportion of such creditor's debt than the value of what was received by such distributee or legatee bears to the total estate distributed. A creditor suing by virtue of this section shall not recover against such distributees and legatees the costs of his action.

§44-3A-34. When enforcement of lien to secure claim barred.

When the right to bring an action against distributees and legatees on any claim against the decedent shall become barred, the right to enforce such claim against real estate shall also become barred to the extent that such claim could have been collected out of the personal assets of the decedent. The provisions of this section shall not apply to liens upon real property acquired or created in the lifetime of the decedent, made or created to secure claims due and payable in future installments or at a future date.

§44-3A-35. Fiduciary commissioners.

The county commission of each county shall appoint not more than four fiduciary commissioners, except that in counties in which there exists a separate tribunal for police and fiscal purposes, such tribunal shall appoint such commissioners: Provided, That the county commission or such separate tribunal shall avoid reference of estates to such commissioners, unless such reference is necessary.

§44-3A-36. Fiduciary commissioners; powers and duties generally.

The fiduciary commissioners shall have general or limited supervision, as may be, of all fiduciary matters that are
referred to them, and of the fiduciaries in charge thereof, and
shall make all ex parte settlements of the accounts of such
fiduciaries. Such commissioners shall have power to
summon and compel the attendance of witnesses, to swear
and examine witnesses, take their depositions and certify
their testimony.

§44-3A-37. Special fiduciary commissioners; continuance of
present references; compensation.
(a) When, from any cause, none of the fiduciary
commissioners can act as to any matter or matters which
may be passed on under the provisions of this chapter, such
commission or tribunal in lieu thereof, may appoint some
other person to act as to such matter or matters, and such
person shall have the power and compensation and perform
the duties of a fiduciary commissioner. And when any
fiduciary commissioner resigns, or is removed, such
commission or tribunal may provide for the completion of the
matters previously referred to such commissioner.
(b) Any matters or estates heretofore referred to a
commissioner of accounts or special commissioner of
accounts shall not be recalled solely by reason of the
amendment and reenactment of this chapter. Commissioners
of accounts or special commissioners of accounts shall be
continued in office as special fiduciary commissioners until
all such matters heretofore referred to them shall, in the-
ordinary course of events, be concluded or until otherwise
recalled for cause.
(c) All special fiduciary commissioners, whether
appointed pursuant to subsection (a) of this section or
continued in office pursuant to subsection (b) hereof, shall be
subject in all respects to the provisions of this chapter,
including, but without limiting the generality hereof, the
provisions of section forty-two of this article with respect to
fees to be charged.

§44-3A-38. Matters that will disqualify fiduciary com-
missioners.
No person shall perform the duties of a fiduciary
commissioner or special fiduciary commissioner in any
matter wherein he will be passing upon his own account or
acts; nor, where he will be called to pass upon any account or
acts with reference to which he served as attorney or
counselor; nor shall he be in any manner interested in the fees
or emoluments of any fiduciary whose accounts or acts are
before him for any action required by this chapter; nor shall
he be surety on the bond of the fiduciary whose accounts are
before him, or agent of, or pecuniarily associated with,
another who may be such surety; nor shall he be qualified to
act in or pass upon any matter before him in which, were he a
judge of the circuit court and the matter were therein
pending, he would for any reason be disqualified to serve.
Any person who violates this section shall be guilty of a
misdemeanor, and, upon conviction thereof, shall, for each
and every violation, be fined not less than fifty nor more than
five hundred dollars or imprisoned in the county jail for not
more than six months, or punished by both fine and
imprisonment at the discretion of the court; and upon such
conviction his office shall ipso facto become vacant.
§44-3A-39. Disposition by fiduciary commissioner of
inventories and accounts of sales.
The fiduciary commissioner shall inspect all inventories
and accounts of sales returned to him by the fiduciary
supervisor or by fiduciaries, require the same to be executed
in triplicate and in proper form, and, within ten days after
they are respectively received and approved by him, deliver
three copies thereof to the fiduciary supervisor of the county
for delivery or to be mailed to those persons or agencies
required to have the same by law. Any such commissioner
who fails, refuses or declines to comply with the provisions of
this section shall be guilty of a misdemeanor and shall be
punished for each offense by a fine of not less than
twenty-five dollars nor more than five hundred dollars.
§44-3A-40. Fiduciary commissioners to inspect bonds of
fiduciaries.
Each fiduciary commissioner shall, at least once each
month, ascertain from the records of the county commission
of his county what estates and fiduciary matters have been
referred to him generally by the county commission or the
fiduciary supervisor, since such commissioner's last
inspection of the records, and examine as to each fiduciary, in
any such estate or matter, whether he has given such bond as
the law requires. If the matter has been referred to such
fiduciary commissioner solely for the purpose of settling a
limited dispute as opposed to a general reference, no such
examination of the record for the purposes set forth herein
need be made by such commissioner. If it appears that the 
fiduciary has given no bond, or that his bond is defective, or 
that the surety therein has removed from the state, died, or 
become insolvent, or is bound already in too many other 
bonds, the commissioner shall make report thereof to his 
commission at its next term and at the same time shall have 
such fiduciary summoned to appear at such term to show 
cause why he should not give such bond as is required by law. 
At such term such fiduciary shall be required forthwith to 
give such bond as is required by law, or shall have his 
authority revoked. And until a fiduciary has fully 
administered the estate or trust under his charge, and made 
his final account, the commissioner shall annually make like 
inspections of the bonds of such fiduciary, and make like 
reports thereof and issue like summons whenever facts exist 
requiring same, and the commission shall make such order as 
may be warranted by the facts then determined. An appeal 
from the order of the county commission on any such order 
shall lie to the circuit court of the county, on request of the 
fiduciary or of the fiduciary commissioner if applied for 
before the end of the term of the county commission at which 
such order was made. When such appeal is taken, the clerk of 
the county commission shall certify all papers in the matter, 
including a copy of the bond, to the clerk of the circuit court, 
where the same shall be docketed and proceeded with as 
other appeals from the county commission.

With respect to estates or matters which have not been 
referred generally to a fiduciary commissioner, the fiduciary 
supervisor shall perform all duties required by this section to 
be performed by the fiduciary commissioner.

§44-3A-41. When county commission to refer controversies to 
fiduciary commissioner; rules of procedure.

The county commission, whenever any controversy arises 
in connection with the probate of any will, or with the 
appointment and qualifications of personal representatives, 
guardians, committees or curators, or with the settlement of 
the accounts of any fiduciary, may, of its own motion, or on 
the motion of any party thereto, and shall, on the joint 
demand of the parties then appearing of record to the 
proceeding, refer the matter to a fiduciary commissioner, or 
to a person specifically appointed to act as such 
commissioner, to hear proof on the same, to make findings
thereon, and to advise the commission on the law governing the decision of the matter. Any party may except to such commissioner's findings of fact or law, and the commission shall hear the case on the fiduciary commissioner's report and the exceptions thereto, without taking any additional evidence. In hearing and reporting on any such matter the fiduciary commissioner shall be governed as to procedure by the law and practice, so far as applicable, controlling commissioners in chancery.

§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.

(a) The fiduciary supervisor shall charge and collect at the time of qualification of the fiduciary of a decedent's estate, a fee of forty dollars of which sum, five dollars shall be forwarded to the state tax commissioner. The moneys so forwarded to the state tax commissioner shall be deposited in the office of the treasurer of the state in a special fund, designated "The Inheritance Tax Administration Fund." to be used to defray, in whole or in part, the costs of administration of the taxes imposed by article eleven, chapter eleven of this code in order to facilitate the prompt administration of the provisions imposed by said article. The remaining thirty-five dollars shall be deposited in the county fiduciary fund as provided in section forty-three of this article. Such fee shall be paid to include all services of the fiduciary supervisor for the settlement of every such decedent's estate which is settled pursuant to the provisions of section nineteen of this article. All such fees shall also include the cost of publication of the notice required by section four of this article, and the notice required by section nineteen of this article, but shall not include the cost of any mailings or of the cost of recording any documents required to be recorded in the office of the clerk of the county commission by the provisions of this chapter.

In the event the fiduciary supervisor is required to examine and prepare a statement of deficiencies, including reasons for disapproving any of the documents required to be filed by the personal representative of any decedent's estate, he shall charge and collect from such personal representative a fee of ten dollars.

(b) In addition to the fees set forth in subsection (a) of this
section, the fiduciary supervisor shall charge a fee, to be fixed
by the county commission in the manner provided in
subsection (c) of this section for conducting hearings,
granting continuances of hearings, considering evidence, for
drafting recommendations with respect to such hearings and
for appearing before the county commission with respect
thereto and any other matters of an extraordinary nature not
normally included within a summary settlement as
contemplated by section nineteen of this article.
Such fee shall be used to defray the costs imposed by or
incidental to any extraordinary demands by or conditions
imposed by a fiduciary or imposed by the circumstances of
the estate.
(c) The fiduciary supervisor or fiduciary commissioner
shall prepare a voucher for the county commission, which
voucher shall be itemized and shall set forth in detail all of the
services performed and the amount charged for such service
or services. Such voucher shall also indicate in each instance
if the service was actually performed by the fiduciary
supervisor or fiduciary commissioner or whether such
service was performed by an employee or deputy of such
supervisor or commissioner. All vouchers shall reflect the
services rendered pursuant to the initial fee charged and
collected as provided in subsection (a) of this section and, in
addition thereto, shall indicate those services for which
charges are to be made over and above that amount. In the
case of any service for which a fee is not fixed by this section,
or the fee fixed is based on time expended, the voucher shall
show the actual time personally expended by the supervisor
or commissioner, to the nearest tenth of an hour. All such
vouchers shall be verified prior to submission to the county
commission for approval. Upon approval of any such
voucher, the same shall be charged against the estate to
which the same applies. In reviewing any fee charged by
either the fiduciary supervisor or a fiduciary commissioner
the county commission shall consider the following:
(1) The time and effort expended;
(2) The difficulty of the questions raised;
(3) The skill required to perform properly the services
rendered;
(4) The reasonableness of the fee;
(5) Any time limitations imposed by the personal
representative, any beneficiary or claimant, or by the
attendant circumstances; and
(6) Any unusual or extraordinary circumstances or
demands or conditions imposed by the personal
representative, any beneficiary or claimant or by the
attendant circumstances. The county commission may
approve any such voucher or may reduce the same, as it
deems proper, after considering those matters set forth in this
subsection. Any such approval shall be by order of the
commission and be entered of record by the clerk of the
county commission in the fiduciary record book and the
general order books of the commission. In no event shall any
fee for any service, whether performed by the fiduciary
supervisor or the fiduciary commissioner, be fixed, charged
or approved which is based upon or with reference to the
monetary value of the estate or of the amount in controversy
upon any disputed issue or fact of law.
(d) For every estate other than a decedent's estate, there
shall be charged by the fiduciary supervisor at the time of
qualification, a fee of twenty-five dollars, which fee shall
include all services performed by the fiduciary supervisor
with respect to such estate from the time of qualification of
the personal representative thereof until and including the
filing of the first annual settlement. For each additional or
subsequent annual or triennial settlement, the fiduciary
supervisor shall charge and collect a fee of ten dollars.
(e) The county commission or other tribunal in lieu
thereof, shall, by order, establish or fix a schedule of
suggested fees or rates of compensation for the guidance of
the fiduciary supervisor and any fiduciary commissioner in
preparing their respective vouchers for fees other than those
fees fixed by any provision of this section or of this chapter. A
copy of these fees or rates shall be posted in a conspicuous
place in the county courthouse.

§44-3A-43. County fiduciary fund.
(a) The county commission, or tribunal in lieu thereof,
shall create a special county fund pursuant to the provisions
of section nine, article one, chapter seven of this code called
the “County Fiduciary Fund.” All moneys received by the
fiduciary supervisor shall be deposited in said fund and the
county commission or tribunal shall pay from said fund all
salaries and expenses of the fiduciary supervisor and all other
expenses associated with the probate system, exclusive of the
fees of fiduciary commissioners or special fiduciary
commissioners and exclusive of recording fees which shall be
collected by the fiduciary supervisor and paid to the clerk of
the county commission. The said commission or tribunal is
authorized to transfer any other county funds as may be
available to said “County Fiduciary Fund.”
(b) Every county commission or tribunal in lieu thereof,
which shall adopt and use the procedure set forth in this
article, shall report to the Legislature on or before the first
day of the regular session thereof held in the year one
thousand nine hundred eighty-three, and on the first day of
every regular session held in the next succeeding three years
thereafter, as to the moneys received into or spent from the
county fiduciary fund of the county to the date of such report,
and of all moneys transferred into said fund and spent from it
or by such county commission for probate matters or other
matters relating to the administration of estates. The tax
commissioner shall prescribe by procedural rule the form and
content of such report which shall be in sufficient detail so as
to permit the identification of the activity or activities
generating the income of such fund and to identify by
function and purpose all expenditures with sufficient detail
to enable the Legislature to determine the extent to which the
probate system and other estate matters are functioning in an
efficient and economical manner and the fiscal implications
thereof. Such reports shall be filed by each such county
commission or tribunal in lieu thereof with the tax
commissioner no later than ten days prior to the first day of
each said session of the Legislature and the tax commissioner
shall thereafter properly collate and file such reports with the
clerk of each house of the Legislature on or before the first
day of each such regular session.

§44-3A-44. Rules applicable to fiduciary supervisors and
fiduciary commissioners; exceptions as to
certain counties.
(a) Subject to the provisions of subsection (c) of this
section and to the provisions of article thirteen of this
chapter, any power, authority or duty conferred upon the
clerk of the county commission with respect to the
settlement, regulation and supervision of estates in any
provision of this article or in any provision of this code is
hereby transferred to the fiduciary supervisor created under
Whenever by any provision of this article any paper, document or record is required or permitted to be recorded, the fiduciary supervisor shall tender the same to the clerk of the county commission and such clerk of the county commission shall admit the same to record and shall record the same at the expense of the personal representative and the fiduciary supervisor shall collect such fees as are required by law for the recordation of such documents and all such fees so collected and paid to the clerk of the county commission shall be disposed of and accounted for in the same manner as if such fees had been collected as for the recordation of deeds.

(b) Any reference in this code to commissioner of accounts or to fiduciary commissioner or to any power, authority or duty conferred upon a commissioner of accounts is hereby intended to mean and in all respects is conferred upon the fiduciary commissioner created by section thirty-five of this article, and, as to matters permitted by law to be done by the fiduciary supervisor, upon such fiduciary supervisor.

(c) Any provision of this article or of article one of this chapter to the contrary notwithstanding, in each county in which there exists a separate tribunal for police and fiscal purposes created under section thirty-four, article VIII of the Constitution of one thousand eight hundred seventy-two, the clerk of the county commission shall have the power and discharge the duties which are by any provision of this chapter conferred upon the fiduciary supervisor or the clerk of the county commission.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-1. Record of appraisement.
§44-4-2. Fiduciaries to exhibit accounts for settlement.
§44-4-3. Fiduciaries from whom inventories, appraisals or accounts are due when this article effective may be proceeded against.
§44-4-4. Fiduciaries of small estates may account once in three years.
§44-4-5. Examination of bonds at time of accounting, and when requested by interested party.
§44-4-6. Settlement for previous years; objections to account.
§44-4-7. Failure to account forfeits commissions unless allowed by circuit court or county commission.
§44-4-8. How accounting compellable by person interested.
§44-4-9. Publication of list of fiduciaries prior to settlements.
§44-4-10. Securities and moneys to be exhibited to fiduciary commissioner.
§44-4-11. Liability for losses or failure to make defense.
§44-4-12. Compensation and expenses of fiduciaries.
§44-4-13. Receipt to be given fiduciaries for vouchers.
§44-4-14. Reports of fiduciary commissioner.
§44-4-15. Exceptions to report.
§44-4-16. Filing of report and vouchers.
§44-4-17. Examination and correction or recommittal of report.
§44-4-18. Effect of confirmation of report; how made conclusive.
§44-4-19. Investment of funds may be ordered.
§44-4-20. Disbursement of balance after settlement; suit to compel disbursement; final report of fiduciary following disbursement.
§44-4-21. How fiduciary accounts settled in suits to be recorded.

§44-4-1. Record of appraisements.
1 Every appraisement returned under this article shall be
2 recorded by the clerk of the county commission in
3 appropriate books and indexed in the same manner as the
4 record of fiduciaries.

§44-4-2. Fiduciaries to exhibit accounts for settlement.
1 A statement of all the money which any personal
2 representative, guardian, curator or committee, has received.
3 become chargeable with or disbursed, within six months
4 from the date of his qualification, or within any succeeding
5 six-month period, together with the vouchers for such
6 disbursements, shall, within two months after the end of
7 every such period be exhibited by him before the fiduciary
8 commissioner to whom the estate or trust has been referred.
9 If any fiduciary fails to make an exhibit, the fiduciary
10 commissioner before whom he should make the exhibit shall
11 proceed against him in the appropriate circuit court, and the
12 court shall impose the same penalties, unless the fiduciary is
13 excused for sufficient reason, as are provided in cases where
14 fiduciaries fail to return appraisements.

§44-4-3. Fiduciaries from whom inventories, appraisals or
accounts are due when this article effective may be
proceeded against.
1 Any fiduciary who has been appointed or qualified before
2 this article takes effect and has not given sufficient bond, nor
3 returned any appraisement as required by law, nor has had
4 any appraisal made of the estate under his control and
5 management, nor has fully and finally accounted, may be
6 summoned, by the fiduciary commissioner as the county
7 commission may designate, to appear before him to return
8 the appraisal or account as may be due from him, or to appear
9 before the county commission or clerk and give a sufficient
§44-4-4. Fiduciaries of small estates may account once in three years.

A fiduciary who is in charge of a trust fund, the principal of which is not distributable until some future time, shall not be compellable by a fiduciary commissioner to make statement of his account, before the time for distribution of principal, oftener than once in every three years, if he shows to the satisfaction of such fiduciary commissioner that the income of the trust fund in his hands does not average annually more than eight hundred dollars; nor shall the fiduciary, in such case, lose his commissions, or suffer any penalties, for failure to account oftener than herein provided for: Provided, That upon proper application by an interested party to the county commission or circuit court which appointed the fiduciary, and upon a sufficient and proper showing being made, such county commission or circuit court may order such fiduciary to account at any time.

§44-4-5. Examination of bonds at time of accounting, and when requested by interested party.

When any fiduciary, except a sheriff, presents the statement required of him by law before a fiduciary commissioner or before a commissioner in chancery having before him the account of the fiduciary for settlement, the fiduciary commissioner or commissioner in chancery, as the case may be, shall examine whether the fiduciary has given bond as the law requires, and whether the penalty thereof and the sureties thereon are sufficient. The fiduciary commissioner to whom the estate or trust was referred shall, upon the application of any interested person at any time before the statement is presented, and after reasonable notice to the fiduciary, examine any matters, or inquire whether security ought to be required of a fiduciary who may have been allowed to qualify without giving it, or whether, by reason of the incapacity, misconduct or removal of any fiduciary from this state, or for any other cause, it is improper to permit the estate of the decedent, ward, beneficiary, or other person, to remain under his control. The result of every examination and inquiry shall
be reported by the fiduciary commissioner to the county commission then having jurisdiction over the fiduciary and his account.

§44-4-6. Settlements for previous years; objections to account.
When a fiduciary commissioner has before him for settlement the account of a fiduciary for any year, if there be any time prior to such year for which the fiduciary has not settled, the settlement shall be also for such time; and also if there be any errors or omissions in accounts for any previous years or periods the same shall be corrected in such settlement. Any person who is interested or appears as next friend for another interested in any such account may, before the fiduciary commissioner, insist upon or object to anything which could be insisted upon or objected to by him, or for such other, before a fiduciary commissioner acting under an order of a circuit court for the settlement thereof made in a suit to which he or such other was a party.

§44-4-7. Failure to account forfeits commissions unless allowed by circuit court or county commission.
If any such fiduciary fails to present to the fiduciary commissioner, to whom the estate or trust has been referred, a statement of receipts for any year, within two months after its expiration, and though a statement be laid before such fiduciary commissioner, yet if such fiduciary be found chargeable for that year with any money not embraced in such statement, he shall have no compensation for his services during such year, nor commission on such money, unless allowed by the county commission or circuit court. This section shall not apply to a case in which, within two months after the end of any one year, the fiduciary gives to the parties entitled to the money received in such year, a statement of such money, and actually settled therefor with them; nor to a case in which, within such two months after the end of any one year, a fiduciary presents a statement of his receipts within the year before a fiduciary commissioner who may, in a pending suit, have been ordered to settle his account.

§44-4-8. How accounting compellable by person interested.
If any fiduciary fails to present to a fiduciary commissioner a statement of his receipts for any year, the county commission shall, upon request made to it, within ten years from the commencement of that year, by any person who is
interested as creditor, legatee, distributee, surety of such fiduciary, or otherwise, or who appears as next friend of a person under disability who is so interested, refer the matter to one of the fiduciary commissioners, who shall issue a summons directed to the sheriff or other officer of any county, requiring him to summon the fiduciary to present to the fiduciary commissioner a statement of his receipts and disbursements, accompanied by his vouchers, for that year, and for the time which may have since elapsed. If the same is not, within one month after the service of the summons, presented to the fiduciary commissioner, he shall report the fact to the circuit court of his county, or to the judge thereof in vacation, and the fiduciary shall be proceeded against in like manner, and be subject to the same penalty, as is provided in cases where fiduciaries fail to return inventories of their respective estates.

§44-4-9. Publication of list of fiduciaries prior to settlements.
1 Every fiduciary commissioner shall, on the first Monday of every month, prepare a list of the fiduciaries whose accounts are at the date of such list before him for settlement, except those that may have been mentioned in some previous list. He shall state the names of the fiduciaries, the nature of their accounts, whether they act as personal representative, guardian, curator or committee and the names of their decedents, or of the persons for whom they are guardians, curators or committees. He shall also publish such list each month as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The first publication of the list shall be made on said first Monday of the month, or on some following day of the same week. No account of any fiduciary shall be completed by any fiduciary commissioner until it has been mentioned in such a list, nor until the completion of the publication. Any fiduciary commissioner who fails to publish this list shall be fined twenty dollars. The cost of the publication of the list shall be borne by the fiduciary commissioner, but he may charge to, and collect from, each of the fiduciaries in the list his proportionate part of the cost thereof as and when the fiduciary commissioner collects his fees for settling the accounts of the fiduciary.
§44-4-10. Securities and moneys to be exhibited to fiduciary commissioner.

1 In settling the account of any fiduciary, the fiduciary commissioner may require him, or any of them, if there are more than one, to produce, before the completion of the account, any securities or moneys comprised in the account or any documents relating to the investments of the estate, and the fiduciary commissioner shall check the same with the items with which the fiduciary has charged himself, and with the appraisement of the estate or trust. The commissioner in his report shall show what money and securities were so produced before him. In case the fiduciary commissioner finds a shortage of money or securities, he shall cause a rule to be issued against the fiduciary to show cause before the circuit court, or judge thereof in vacation, of the county wherein such fiduciary qualified, why such fiduciary should not be required to replace any moneys or securities that have been improperly applied or disposed of, or the value thereof. The proceedings upon every such rule shall be considered for all purposes to be proceedings in equity, and the orders and decrees therein shall be enforceable accordingly. The court or judge thereof shall have full power to require the fiduciary to replace any moneys, securities or property that have been improperly applied or disposed of, or the value thereof, or to pay or transfer the same or any moneys, securities or property, with which the fiduciary may be charged, into a proper account or otherwise, as the court or judge thereof may order. If the order or decree is not complied with within a time to be fixed by the court, the powers of the fiduciary shall be revoked and annulled, and the court shall so order. The failure of the fiduciary to comply with the order or decree shall also be a breach of the fiduciary's bond.

§44-4-11. Liability for losses or failure to make defense.

1 If any personal representative, guardian, curator or committee shall, by his negligence or improper conduct, lose any debt or other money, he shall be charged with the principal of what is so lost and interest thereon in like manner as if he had received such principal. And if any personal representative, guardian, curator or committee shall pay any debt, the recovery of which could be prevented by reason of illegality of consideration, or lapse of time, or otherwise, when he knows, or by the exercise of due diligence could
ascertain, the facts by which the same could be so prevented, no credit shall be allowed him therefor.

§44-4-12. Compensation and expenses of fiduciaries.
1 The fiduciary commissioner in stating and settling the account shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation in the form of a commission on receipts or otherwise. Any executor, administrator, guardian, committee, assignee, receiver, special fiduciary commissioner, or other fiduciary, required by law, or by the order of any court or judge, to give a bond or obligation as such, may include, as a part of the lawful expense of executing his duties, such reasonable sum paid a company, authorized under the laws of this state so to do, for becoming his surety on such bond or obligation, as may be allowed by the court in which, or the fiduciary commissioner before whom, he is required to account, or a judge of such court, not exceeding, however, one third of one percent per annum on the amount of such bond or obligation.

§44-4-13. Receipt to be given fiduciaries for vouchers.
1 Any fiduciary commissioner or commissioner in chancery, having before him the accounts of a fiduciary for settlement, shall, on request, execute and deliver to such fiduciary a receipt for all vouchers filed with him. That receipt, if such vouchers be afterwards lost or destroyed, shall, in any suit or proceeding against such fiduciary, be evidence of the delivery to the fiduciary commissioner of the vouchers therein mentioned.

§44-4-14. Reports of fiduciary commissioner.
1 Every account stated under this article shall be reported with any matters specially stated, deemed pertinent by the fiduciary commissioner, or which may be required by any person interested to be so stated.

§44-4-15. Exceptions to report.
1 Upon completion of such report of settlement of account the fiduciary commissioner shall give notice thereof, either verbally or in writing, delivered personally or by mail, to all parties interested or their attorneys, and hold the report, vouchers and any evidence taken in connection with the report, in his office for ten days, during which time any
§44-4-16. Filing of report and vouchers.
1 The fiduciary commissioner shall file the report in the
2 office of the court by which he is appointed, as soon as
3 practicable after the expiration of such ten days; and with his
4 report he shall return all evidence taken before him and such
5 exceptions, with such remarks as he may see fit to make, and
6 such of the vouchers as any person interested may desire him
7 to return, or as he may deem proper.

§44-4-17. Examination and correction or recommittal of report.
1 The county commission, at its first regular term occurring
2 not less than ten days after the report has been filed in the
3 office of its clerk, shall examine the same, with the evidence
4 and such exceptions to the report as may be filed at any time
5 before such examination. It shall correct any errors which
6 shall appear from the exceptions, and any appearing on the
7 face of the account, whether excepted to or not; and to this
8 end may commit the report to the same, or to another
9 fiduciary commissioner, as often as the county commission
10 sees cause; or it may confirm the report in whole or in a
11 qualified manner. The county commission, and the circuit
12 court, if there be appeal from the county commission in any
13 such matter, shall hear no new evidence, but, if good cause
14 therefore be shown, the commission may recommit the report
15 for the taking of further evidence and further report. The
16 clerk shall, in a book kept for the purpose, record every report
17 which may be confirmed, and at the foot of it the order of
18 confirmation. The evidence and any exceptions shall remain
19 on file in the clerk's office, but any voucher returned with the
20 report or remaining with the fiduciary commissioner at the
21 time of such confirmation, and not wanted for any further
22 matter of inquiry before him, shall be returned by him to the
23 party who filed the same.

§44-4-18. Effect of confirmation of report; how made conclusive.
1 The report, to the extent to which it may be so confirmed by
2 the county commission, or confirmed on appeal by the circuit
3 court, shall be taken to be correct, and shall be binding and
4 conclusive upon creditors of a decedent’s estate, and binding
5 and conclusive upon every beneficiary of the estate who has
6 had notice that the report has been laid before the fiduciary
commissioner for settlement, or upon completion of the report was notified by the fiduciary commissioner of its completion and that the same would remain in his office ten days subject to inspection and exception. Such notices to any creditor or beneficiary who is under disability shall be given by personal service on the guardian or committee of such person. Where the report is that of a guardian, committee or curator, the notice shall be served personally on the infant, ward or beneficiary and on the person or persons having his custody, or upon the guardian ad litem of such infant, ward or beneficiary that may be appointed for the purpose by the county commission.

§44-4-19. Investment of funds may be ordered.

When it appears by a report made as aforesaid or a special report of the fiduciary commissioner that money is in the hands of such fiduciary, the county commission, before which the report comes, may order the same to be invested or loaned as provided in article six of this chapter.

§44-4-20. Disbursement of balance after settlement; suit to compel disbursement; final report of fiduciary following disbursement.

When a county commission has confirmed, either in whole or in a qualified manner, a report of the accounts of any personal representative, guardian, curator, committee as aforesaid, the county commission may order payment of what appears due on the accounts to such persons as would be entitled to recover the same by a suit in equity. If the order is not complied with, any person interested may bring a suit in chancery in the circuit court of the county wherein such order was made, to compel compliance therewith. In such suit the commission's order shall be taken as prima facie correct, and there shall be a decree according to the order except so far as it may appear upon proper pleadings and proof to be erroneous. If any fiduciary makes any payment in accordance with the order of the county commission more than three months after the order was made, and before suit has been commenced under this section, the payment shall not be disturbed nor shall the fiduciary be in anywise liable with respect thereto. And when the personal representative, guardian, curator or committee or other fiduciary has fully paid out all the funds in his hands he shall within ninety days thereafter, or at the first term of the commission thereafter,
make a final, full and detailed report to the commission of such payments, and file therewith the vouchers for such disbursements; and when the commission, upon examination of such report and vouchers, ascertains the same to be correct, it shall approve and confirm such report and order the same to be recorded. The clerk of the commission shall record every such report which may be so confirmed, and at the foot of it the order of confirmation. It shall be the duty of the fiduciary commissioner who made the report in this section first mentioned, to require that the fiduciary renders, in proper form, the final report herein required, and, in case of the failure of the fiduciary to render a final report, he shall be proceeded against in the same manner, and be subject to the same penalties, as a fiduciary who fails to return an inventory or to lay his accounts before a fiduciary commissioner for settlement.

§44-4-21. How fiduciary accounts settled in suits to be recorded.

When the account of any fiduciary is settled in a suit, it shall be the duty of the clerk of the court in which such suit is, within ten days after the close of the term of court at which the final decree in such suit is entered, to certify, to the clerk of the county commission wherein such fiduciary qualified, such account so far as the same has been confirmed, with a memorandum at the foot thereof stating the style of the suit and the date of the final decree, rendered in such suit. The clerk receiving such account and memorandum so certified shall record the same in the same book in which the accounts settled before a fiduciary commissioner are recorded, and after recordation the original account and memorandum shall be returned to the clerk from whom the same were certified and transmitted. If in any proceedings subsequent to such final decree, by appeal or otherwise, the account is reformed or altered, the reformed or altered account shall in like manner be certified and recorded, together with a memorandum stating the style of the suit and the date of the decree of confirmation. The fees for making the certification and for recording shall be paid as the court in which the suit is, or the judge thereof, shall direct. Any clerk failing to comply with this section shall be subject to the same penalties as clerks of the county commission who fail to keep a list of fiduciaries.
ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-1. List of fiduciaries.

§44-5-2. Fiduciary records of circuit court to be deposited in county clerk's office.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

§44-5-4. Who not to be accepted as surety on fiduciary's bond.

§44-5-5. When additional or new bond may be required of a fiduciary, or his authority be revoked.

§44-5-6. Jurisdiction of court on revocation of fiduciary's authority.

§44-5-7. Authority of fiduciaries to compound and compromise liabilities due to or from them.

§44-5-8. How transfer of securities to successor compelled.

§44-5-9. Costs in proceedings to compel fiduciaries to comply with law.


§44-5-11. Designation of testamentary trustee as beneficiary of insurance.

§44-5-12. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements.

§44-5-1. List of fiduciaries.

1 The clerk of the county commission of each county shall keep a record, to be known as the "Record of Fiduciaries," in which he shall enter, in separate columns, first, the name of every fiduciary authorized to act as such by such county commission or clerk thereof; secondly, the name of the decedent for whose estate he is personal representative or curator; thirdly, the names of the distributees of such estate, showing their relation to the decedent; fourthly, the name of the living person or persons for whom he is guardian, curator, committee or trustee: fifthly, the penalty of his bond; sixthly, the names of his sureties; seventhly, the date of the order conferring his authority, and a reference to the book and page where entered; eighthly, the date of any order revoking his authority, and a reference to the book and page where entered; ninthly, the date of the return of every inventory and appraisement of the estate; tenthly, the date of the confirmation of each report of settlement of the accounts of such fiduciary; and the clerk shall index such record in the name of the decedent, estate, ward or person represented by such fiduciary. Any clerk failing to make such entry, as to any fiduciary, within ten days after the order conferring or revoking the authority, or the date of the return of such inventory and/or appraisement, or the date of the confirmation of any report of settlement, shall, for every such failure, forfeit twenty dollars.
§44-5-2. Fiduciary records of circuit court to be deposited in county clerk's office.

The circuit court of each county shall, as soon as may be after this code becomes effective, direct its clerk to transfer to the office of the clerk of the county commission of its county any wills, records of wills, records of the appointment and qualification of personal representatives, guardians, curators or committees, and records of their oaths, bonds, inventories, appraisements and settlements, heretofore kept in their said courts, and the clerk of the county court shall keep and preserve the same among the other similar records of his office. If the same are not properly and completely indexed when deposited in his office, the county clerk shall make a full and complete index to the same.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

Notwithstanding any other provision of law, no person not a resident of this state nor any nonresident banking institution nor any corporation having its principal office or place of business outside this state may be appointed or act as executor, administrator, curator, guardian or committee, except that a testator who is a nonresident of this state at the time of his death may name, and there may be appointed and act, a nonresident as his executor, and except that for the guardian of an infant who is a nonresident of this state there may be appointed and act the same person who is appointed guardian at the domicile of the infant: Provided, That whenever the will of a decedent who was a resident of this state at the time of his death, hereinafter in this section referred to as “resident decedent,” designates an individual, who is the husband, wife, father, mother, brother, sister, child, grandchild or sole beneficiary of such resident decedent as executor, then such designated individual may qualify and act as executor notwithstanding the fact that he is a nonresident: Provided, however, That a nonresident individual or individuals may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article twelve of this chapter: Provided further, That a nonresident individual may be appointed as administrator of an estate in accordance with the provisions of section four, article one of this chapter and act as such administrator if such individual
be the husband, wife, father, mother, brother, sister, child, grandchild or the sole beneficiary of a decedent who was a resident of this state at the time of his death, hereinafter in this section also referred to as a "resident decedent," and if such individual may otherwise qualify as such administrator. Nonresident executors and administrators of resident decedents, and nonresident testamentary guardians shall give bond with corporate surety thereon, qualified to do business in this state, in such penalty as may be fixed pursuant to the provisions of section seven, article one of this chapter, except that such penalty in the case of a nonresident executor shall not be less than (1) double the value of the personal estate and (2) double the value of any real property authorized to be sold under the will or the value of any rents and profits from any real property which the will authorizes the nonresident executor to receive, and except that such penalty in the case of a nonresident administrator shall not be less than double the value of the personal estate. The personal estate of a resident decedent may not be removed from this state until the inventory or appraisal of the resident decedent's estate has been filed and any new or additional bond required to satisfy the penalty specified above in this section has been furnished. The liability of a nonresident executor or administrator and such surety shall be several and a civil action on any such bond may be instituted and maintained against the surety, notwithstanding any other provision of this code to the contrary, even though no civil action has been instituted against the nonresident executor or administrator.

When a nonresident qualifies as an executor, administrator or guardian of an infant pursuant to the provisions of this section, he thereby constitutes the clerk of the county commission wherein the will was admitted to probate or wherein he was appointed as administrator, or such clerk's successor in office, his true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him as executor, administrator or guardian or with respect to such estate, and such qualification shall be a signification of the executor's, administrator's or guardian's agreement that any notice or process, which is served in the manner hereinafter in this section provided, shall be of the same legal force and validity as though the executor, administrator or guardian were
personally served with notice and process within this state. Service shall be made by leaving the original and two copies of any notice or process, together with a fee of five dollars, with the clerk of such county commission. Such clerk shall thereupon endorse upon one copy thereof the day and hour of service and shall file such copy in his office and said service shall constitute personal service upon such nonresident executor, administrator or guardian: Provided, That the other copy of such notice or process shall be forthwith sent by registered or certified mail, return receipt requested, deliver to addressee only, by said clerk to the nonresident executor, administrator or guardian at the address last furnished by him to said clerk and either (a) such nonresident executor's, administrator's or guardian's return receipt signed by him or (b) the registered or certified mail bearing thereon the stamp of the post-office department showing that delivery therefor was refused by such nonresident executor, or administrator or guardian is appended to the original notice or process and filed therewith in the office of the clerk of the county commission from which such notice or process was issued. No notice or process may be served on such clerk of the county commission or accepted by him less than twenty days before the return day thereof. The clerk of such county commission shall keep a record in his office of all such notices and process and the day and hour of service thereof. The provision for service of notice or process herein provided is cumulative and nothing herein contained shall be construed as a bar to service by publication where proper or to the service of notice or process in any other lawful mode or manner. The fee of five dollars shall be deposited in the county treasury.

If a nonresident testamentary guardian appointed pursuant to this section fails or refuses to file an accounting by this chapter while his ward remains a resident of this state, and the failure continues for two months after the due date, he may, upon notice and hearing, be removed or subjected to any other appropriate order by the county commission, and if his failure or refusal to account continues for six months, he shall be removed as testamentary guardian by the county commission.

Any nonresident executor, administrator or guardian who removes from this state the personal estate of a resident decedent or of the infant of a resident decedent without
complying with the provisions of this section, the provisions of article eleven, chapter forty-four of this code or any other requirement pertaining to fiduciaries generally, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or by confinement in the county jail for not more than one year, or, in the discretion of the court, by both such fine and imprisonment.

§44-5-4. Who not to be accepted as surety on fiduciary's bond.

1 A judge of the circuit court, member of the county commission, clerk or deputy clerk of the circuit court or county sheriff or deputy sheriff, fiduciary commissioner or an attorney-at-law, shall not be taken as surety in any bond required to be given by any fiduciary. When, for any reason, the provisions of this section are violated in the taking of any bond, the bond so given shall not be void, but upon the discovery of such fact a new bond shall be required of the fiduciary.

§44-5-5. When additional or new bond may be required of a fiduciary, or his authority be revoked.

1 The county commission under whose order, or under the order of whose clerk, any such fiduciary derives his authority, when it appears proper on any report of the clerk or a fiduciary commissioner or a commissioner in chancery, or on evidence adduced before it by any party interested, may, at any time, whether such fiduciary shall or shall not have before given any bond, or whether he shall have given one with or without sureties, order him to give before the commission an additional bond within a prescribed reasonable time, in such penalty, and with or without sureties, as may appear proper; or when any surety on the bond of a fiduciary, or the personal representative of any surety, shall apply therefor, the commission shall order the fiduciary to give before it a new bond within a prescribed reasonable time, in such penalty, and with such sureties, as may appear proper, it may, in either case, if the order be not complied with, or whenever from any cause it appears proper, revoke and annul the powers of such fiduciary. No such order shall be made unless reasonable notice is given to the fiduciary by the clerk or the fiduciary commissioner who made the report, or by the surety or the personal representative of the surety making the application aforesaid,
or by the service of a rule or otherwise. No such order of revocation shall invalidate any previous acts of the fiduciary.

§44-5-6. Jurisdiction of court on revocation of fiduciary's authority.

After the date of any order revoking and annulling the powers of any fiduciary, the county commission in which he qualified shall exercise such jurisdiction, either by appointing an administrator de bonis non, or a new guardian, or otherwise, as it could have exercised if such fiduciary had died at that date.

§44-5-7. Authority of fiduciaries to compound and compromise liabilities due to or from them.

It shall be lawful for any guardian, committee or trustee, to compound and compromise any liability due to or from him, provided that such compounding and compromise be ratified and approved by a court of equity of competent jurisdiction, all parties in interest being before the court by proper process. When such compounding and compromise has been so ratified and approved, it shall be binding on all parties in interest before the court. It shall be lawful for any personal representative to compound and compromise any liability due to or from him, provided that compounding and compromise is ratified and approved by the fiduciary commissioner to whom the estate or trust has been referred, or by a commissioner in chancery when the estate of the decedent is being settled in a chancery suit, and is reported by the fiduciary commissioner to his court. When the report is confirmed, the compounding and compromise shall be binding on all parties to the proceedings.

§44-5-8. How transfer of securities to successor compelled.

When any securities for money loaned or invested, or any money, or property of any kind or nature, shall be standing in the name of any fiduciary who shall have died or resigned, or whose powers shall have been revoked, and such fiduciary or his personal representative shall not have transferred such securities, money or property to his successor, the circuit court of the county, or the judge thereof in vacation, in which such fiduciary shall have qualified, upon the petition of such successor, or of any other person interested, may direct such securities, money or property to be transferred to such successor, and may direct the dividends, interest, income or proceeds of such securities, money or property to be received
13 or paid in such manner as such court shall think proper.

§44-5-9. Costs in proceedings to compel fiduciaries to comply with law.
1 The costs of any proceedings, authorized or directed to be brought against any fiduciary to enforce or compel his compliance with the requirements of the law, shall include a reasonable fee to the fiduciary commissioner at whose instance the same are had, and shall be charged and paid as the court may direct. In every case where the fiduciary is in default, without reasonable excuse therefor, the costs shall be adjudged against and paid by the fiduciary personally. In no case shall the costs be adjudged against the fiduciary commissioner unless he instituted the proceedings in bad faith.

1 In each county in which there exists a separate tribunal for police and fiscal purposes, created under section thirty-four, article VIII of the constitution of one thousand eight hundred seventy-two, the clerk of the county commission shall have the powers and discharge the duties which by this chapter are vested in and imposed upon the county commission.

§44-5-11. Designation of testamentary trustee as beneficiary of insurance.
1 A policy of life insurance may designate as beneficiary a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurer. The proceeds of such insurance shall be paid to the trustee or trustees to be held and disposed of under the terms of the will as they exist at the death of the testator; but if no trustee or trustees make claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within such one-year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured. The proceeds of the insurance as collected by the trustee or trustees shall not be subject to debts of the insured or to inheritance tax to any
greater extent than if such proceeds were payable to any
other named beneficiary other than the estate of the insured,
and shall not be considered as payable to the estate of the
insured for any purpose. Such insurance proceeds so held in
trust may be commingled with any other assets which may
properly come into such trust as provided in the will.
Enactment of this section shall not invalidate previous life
insurance policy designations naming trustees of trusts
established by will.

§44-5-12. Distribution of assets in satisfaction of pecuniary
bequests; authority of fiduciaries to enter into
certain agreements; validating certain agreements.
(a) Where a will authorizes or directs the fiduciary to
satisfy wholly or partly in kind a pecuniary bequest unless
the will shall otherwise expressly provide, the assets selected
by the fiduciary for that purpose shall be valued at their
respective values on the date or dates of their distribution.
(b) Whenever a fiduciary under the provisions of a will or
other governing instrument is required to satisfy a pecuniary
bequest or transfer in trust in favor of the testator’s or donor’s
spouse and is authorized to satisfy such bequest or transfer
by selection and distribution of assets in kind, and the will or
other governing instrument further provides that the assets to
be so distributed shall or may be valued by some standard
other than their fair market value on the date of distribution,
the fiduciary, unless the will or other governing instrument
otherwise specifically directs, shall distribute assets,
including cash, fairly representative of appreciation or
depreciation in the value of all property available for
distribution in satisfaction of such pecuniary bequest or
transfer. This section shall not apply to prevent a fiduciary
from carrying into effect the provisions of the will or other
governing instrument that the fiduciary, in order to
implement such a bequest or transfer, must distribute assets,
including cash, having an aggregate fair market value at the
date or dates of distribution amounting to no less than the
amount of the pecuniary bequest or transfer as finally
determined for federal estate tax purposes.
(c) Any fiduciary having discretionary powers under a will
or other governing instrument with respect to the selection of
assets to be distributed in satisfaction of a pecuniary bequest
or transfer in trust in favor of the testator’s or donor’s spouse,
shall be authorized to enter into agreements with the commissioner of internal revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of such bequest or transfer in trust and any such agreement heretofore entered into after April one, one thousand nine hundred sixty-four, is hereby validated. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the internal revenue laws of the United States of America, and to do and perform all acts incident to such purpose.

Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust fund, as provided for in section six of this article, shall not be required to render an accounting with regard to such fund, before any fiduciary commissioner but it may, by application to the circuit court of the county in which is located the principal place of business of said bank or trust company, secure the approval of an accounting in such condition as the court may fix: Provided, That nothing herein shall be interpreted as relieving any fiduciary acquiring, holding or disposing of an interest in any common trust fund from making an accounting as required by law with respect of such interest.

ARTICLE 7. RESIGNATION OF FIDUCIARIES AND PROCEDURE UPON RESIGNATION.

§44-7-2. Copy of petition and summons to be served on fiduciary commissioner.

§44-7-3. Hearing on petition.

§44-7-2. Copy of petition and summons to be served on fiduciary commissioner.

1 Such fiduciary as is mentioned in the preceding section shall cause to be served, on the fiduciary commissioner whom the county commission shall designate, a copy of his petition and a copy of the summons issued thereon, at least ten days before the return day of the summons. The fiduciary commissioner shall investigate the records of the county
commission to see if such fiduciary has rendered such inventories, appraisements and accounts as the law requires, and whether any further accounts should be required of him, and on or before the return day certify the facts relating to such matters to the county commission. For making such investigation and certificate the fiduciary commissioner shall be allowed a fee of not less than one dollar, nor more than ten dollars, as the commission may direct, to be charged and collected as other costs on such petition.

§44-7-3. Hearing on petition.

When the summons has been served upon all the parties named and referred to in the petition, and any necessary order of publication has been duly completed, the commission shall, on the day named in the summons, or on some later day to which a continuance may have been taken, proceed to hear the matter. If no objection is made to the resignation of the fiduciary by any person interested in the estate mentioned in the petition, and if the commissioner's certificate shows he has fully and properly rendered all inventories, appraisements and accounts due from him, his resignation may be accepted and entered of record by the commission. But if objection be made by any such person on the ground that the fiduciary has not fully settled and accounted for the estate committed to his care, at the time of filing his petition, or for any other valid reason, or it appears from the commissioner's certificate that an inventory, an appraisement, or an account is due from the fiduciary, the petition and objections or commissioner's certificate shall be referred to the fiduciary commissioner or to some other fiduciary commissioner or to a special commissioner appointed for the purpose, to do and perform such duties, and report upon such matters and things as are stated in the order of reference, and report the same to the commission. The same proceedings shall be had on such order of reference and the report when made as are had in the circuit court in a suit in chancery in that court. If it shall appear to the commission in any such case that the fiduciary has not fully settled and accounted for the estate committed to his charge, or that there is money or other property in his hands, or under his control, not yet paid over or disposed of, such orders as may be necessary and proper for the disposition and safekeeping thereof shall be made by the commission, and when such
orders are complied with by the fiduciary, his resignation may be accepted. His resignation when accepted shall not affect or impair the liability of the sureties on his official bond in force at the time of his resignation and the acceptance thereof, for any default by him in the discharge of his duties as such fiduciary, remaining unsettled or unsatisfied. The costs in such cases shall be paid as the court may order.

ARTICLE 8. REAL ESTATE OF DECEDENTS.

§44-8-8. Reference to special commissioner and publication of notice to creditors in such suit.

No decree for the distribution of the proceeds of the real estate of such deceased person among his creditors shall be made until a reference is made to a commissioner in chancery to ascertain and report all the liens on the real estate or any part thereof, the holders of such liens, the amount due to each, and the priorities thereof, and report made of all general claims and the priorities of the same, and until a notice to all creditors to present and prove their claims is published as hereafter provided. The notice shall be in the following form or to the following effect:

To all creditors of A .........B ........., deceased, including those holding liens by judgment or otherwise on his real estate, or any part thereof.

In pursuance of a decree of the .........court, of the county of ..........., made in a cause therein pending, to subject the real estate of the said A .........B ........., to the payment of his debts, including those which are liens on such real estate, or any part of it, you are hereby required to present your claims to the undersigned for adjudication, at (designating place) on or before the .........day of .........; otherwise you may by law be excluded from all benefit of such real estate.

Given under my hand this .........day of ........., .........

C ........... D ...........,
Commissioner in Chancery.

Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the action is pending. The court shall designate the newspaper in which such notice shall be published. The court may direct such
other notice to be given as it may deem proper. Such
publication of such notice shall be equivalent to personal
service thereof on all creditors, including those holding liens
on such real estate, unless the court shall in the order
directing publication otherwise order. Any creditor who may
have filed his claim before a fiduciary commissioner may
withdraw the same and the proof thereof made before such
commissioner, and may file such claim and proof before the
commissioner in chancery, and the commissioner in
chancery shall, unless there be objection by any party to the
suit, accept such proof for what the same may legally show.
No other publication to creditors than the one provided by
this section shall be necessary, and when any notice of the
reference is required by law or by the court to be published,
the notice of the reference shall be included in the above
notice, so that there may be but one publication.

ARTICLE 9. PERSONS PRESUMED TO BE DEAD AND THEIR
ESTATES.

§44-9-1a. When person in military service presumed to be dead; ad-
ministration of estate; when spouse may remarry.

§44-9-5. Evidence on such application; record thereof.

§44-9-6. Order declaring presumption established; probate of will;
letters testamentary or of administration; their effect.


§44-9-1a. When person in military service presumed to be dead;
administration of estate; when spouse may remarry.

Presumptive findings of death of any person engaged in
any service or activity of, or employment by the United States
in connection with or with respect to any hostilities in which
the United States is engaged, whether war be formally
declared or otherwise, by an official or officer of the United
States, who is authorized to make such presumptive findings
by any act of Congress, shall create a presumption of the
death of such person in the state of West Virginia.
Proceedings under section three of this article may be
commenced at any time after such finding is made.

No administrator, executor or personal representative of
any person who is presumed to be dead under this section
shall make final distribution of the assets of any such person
until the expiration of three years after the date of the making
of such presumptive findings by persons authorized to do so
by the provisions of this section: Provided, That assets in the
estate of any such person, which are exempt from attachment by creditors, including moneys paid by the United States of such nature, and other assets of any such estate which would otherwise be available for support of the wife, children and other dependents of such person, if he were alive, after allowance for debts and costs of administration, may be paid by the personal representative for the support of the wife and children and the dependents of such person upon order of the circuit court of the county which has jurisdiction in probate proceedings until such time as distribution may be made or administration terminated, and such sums shall be treated for all purposes of law as expenditures legally chargeable against such person, as if he were living to the time a final presumption of death becomes effective in this state. In case any such person presumed to be dead as a result of a finding, as aforesaid, is not heard from as provided in section one of this article, for a period of three years after making of such presumption, the presumption provided in section one of this article shall become effective to permit final distribution of his estate.

No surviving spouse of any person who is presumed to be dead under this section shall marry another until after the expiration of two years following the finding aforesaid, unless proceedings for divorce were commenced by such spouse or the missing person prior to the date such presumptive finding was made by an official of the United States; and after such two-year period the surviving spouse shall be free to remarry, or at any time unless the other spouse be heard from prior to the actual date of remarriage.

§44-9-5. Evidence on such application; record thereof.

At the hearing in either of the cases provided for in the preceding two sections, the county commission shall receive all legal evidence as may be offered, for the purpose of ascertaining whether the presumption of death is established; or it may refer the matter to a fiduciary commissioner to take such evidence, and report his findings thereon. No person shall be disqualified as a witness by reason of relationship to the supposed decedent or interests in his estate. All the evidence shall be reduced to writing and preserved in the files of the commission with the record of the case.
§44-9-6. Order declaring presumption established; probate of will; letters testamentary or of administration; their effect.

If the commission is satisfied, upon the hearing or from the report of the fiduciary commissioner, that the legal presumption of death is established, the commission shall so declare by order, and shall then proceed to hear, and to grant, if proper, the application for probate of the will of such supposed decedent, if such there be, and to grant letters testamentary or of administration, as the case may require, to the party entitled thereto, who shall qualify and give bond as in cases of persons known to be dead. The probate of any such will and such letters, until revoked, and all acts done in pursuance thereof and in reliance thereupon, shall be as valid as if the supposed decedent were in fact dead.


The clerk of any county commission during the recess of the regular sessions of the county commission may exercise the same powers as are herein conferred upon such commission.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-8. Disbursements and expenditures by guardians from income and corpus of estates of infant wards.

§44-10-15. Disbursements of funds of infant wards.

§44-10-8. Disbursements and expenditures by guardians from income and corpus of estates of infant wards.

No disbursements, beyond the annual income of the ward’s estate, shall be allowed to any guardian where the deed or will, under which the estate is derived, does not authorize it, unless the same shall have been authorized by the circuit court of the county in which the guardian was appointed or qualified. Any guardian, who may desire to spend more than the annual income of his ward’s estate for any purpose, shall file in such circuit court a petition, verified by his oath, setting forth the reasons why it is necessary to make such expenditures, to which petition the ward shall be made defendant. The court shall appoint a guardian ad litem for the ward, who shall answer such petition, be present at the hearing, and represent the infant. Five days’ notice shall be given to the defendant before such petition can be heard. At the hearing the evidence may be taken orally, and the court, if
satisfied that such expenditure would be judicious and
proper, may grant the prayer of the petition. Such petition
may be filed and heard before the judge of such court in
vacation as well as in term time. In the settlement of the
guardian’s accounts no credit shall be allowed him by the
fiduciary commissioner or the court for expenditures for his
ward, except for expenditures of the annual income of his
ward’s estate and for expenditures of such amounts of the
principal of the ward’s personal estate as are authorized by
the court as provided by this section: Provided, That if the
personal estate in the hands of the guardian does not exceed
in amount the sum of three thousand dollars, disbursement
may be made by the guardian from the corpus of such
personal estate for the ward’s maintenance and education,
after first securing the written approval so to do of and from
the fiduciary commissioner to whom the settlement of the
ward’s estate was referred.

§44-10-15. Disbursement of funds of infant wards.
1 In any such settlement, pursuant to the next preceding
2 section, wherein the amount paid the guardian does not
3 exceed the sum of one thousand dollars, the court or judge
4 approving the settlement may, in its or his discretion,
dispense with, or withdraw a reference to a fiduciary
5 commissioner, authorize the disbursement of the fund so
6 created by the settlement and may discharge the guardian
7 and the surety on his bond. In all such cases a certified copy
8 of the order of the court or judge, as the case may be, shall be
9 recorded in the office of the clerk of the county commission
10 wherein the guardian was appointed.

ARTICLE 15. VETERAN’S GUARDIANSHIP AND COMMITMENT.


1 Every guardian, who shall receive on account of his ward
2 any moneys from the government of the United States or any
3 agency thereof, shall file with a fiduciary commissioner
4 annually, on the anniversary date of the appointment, or
5 within thirty days thereafter, in addition to such other
6 accounts as may be required, a full, true and accurate
7 account under oath of all moneys so received by him, of all
8 disbursements thereof, and showing the balance thereof in
his hands at the date of such account and how invested:

Provided, That in cases where the income received by the committee or guardian does not average annually more than eight hundred dollars, the committee or guardian may make his report of account to the commissioner once in every three years. The fiduciary commissioner shall send a true copy of each such account to the office of the bureau or other agency of the government having jurisdiction over the area in which the court is located and from which payments are made. The fiduciary commissioner shall fix a time and place for the hearing on such account not less than fifteen nor more than thirty days from the date of filing the same, and notice thereof shall be given by the fiduciary commissioner to the aforesaid bureau or other agency of the government not less than fifteen days prior to the date fixed for the hearing. Notice of such hearing shall in like manner be given to the guardian.


If any guardian shall fail to file any account of the money received by him from the bureau or other agency of the government on account of his ward within thirty days after such account is required by either the fiduciary commissioner or the bureau or other agency of the government, or shall fail to furnish the bureau or other agency of the government a copy of his accounts as required by this article, such failure shall be grounds for a removal.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.

§56-10-4. Compromise of actions and suits in behalf of infants and insane persons and disbursement of funds arising therefrom.

In any action or suit wherein an infant or insane person is a party, the court in which the same is pending, or the judge thereof in vacation, shall have the power to approve and confirm a compromise of the matters in controversy on behalf of such infant or insane person, if such compromise shall be deemed to be to the best interest of the infant or insane person. Such approval or confirmation shall never be granted except upon written application therefor by the guardian, committee, curator or next friend of the infant or insane person, setting forth under oath all the facts of the case and
the reasons why such compromise is deemed to be for the best interest of the infant or insane person. And the court or judge, before approving such compromise, shall, in order to determine whether to approve or disapprove the compromise, hear the testimony of witnesses relating to the subject matter of the compromise and cause said testimony to be reduced to writing and filed with the papers in the case. The court or judge, upon approving and confirming such compromise, shall enter judgement or decree accordingly. Such judgment or decree shall bind the respective parties thereto, including such infant or insane person, with like force and effect, and shall be subject to review, modification or reversal to the same extent only, as if it were a consent judgment or decree, entered under similar circumstances, in a case in which all the parties were adults and sane. In any such compromise wherein the amount paid to the guardian or committee does not exceed the sum of ten thousand dollars, the court or judge approving and confirming the compromise and entering judgment or decree thereon may, in its or his discretion, dispense with or withdraw a reference to a fiduciary commissioner as to said compromise, authorize the disbursement of the fund so created by the compromise and may discharge the guardian or committee and the surety on his bond as to the proceeding then pending in the circuit court, and in all such cases a certified copy of the order of the court or judge, as the case may be, shall be recorded in the office of the clerk of the county commission wherein the guardian or committee was appointed.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.


The county commission shall promulgate by order a schedule of fees or a rate of compensation for the guidance of fiduciary commissioners, based upon the actual time spent and actual services rendered, or both a schedule and a rate of compensation as the commissioners may deem appropriate: Provided, That no fee may be based solely upon the amount of the estate. A copy of these fees or rates shall be posted in a conspicuous place in the county courthouse.
The fiduciary commissioner shall submit to the commission an itemized statement of services rendered and time expended in the settling of every estate, along with a statement of fees charged therefor. The county commission shall review all fees charged by a fiduciary commissioner, and shall approve, disapprove or modify the fee as it may deem appropriate. In reviewing any fee the county commission shall consider the following: (1) The time and labor expended; (2) the difficulty of the questions raised; (3) the skill required to perform properly the services rendered; (4) the customary fee for like work; and (5) any time limitations imposed by the personal representative, any beneficiary, or by the attendant circumstances.

CHAPTER 65
(Com. Sub. for S. B. 131—By Mr. Steptoe)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dower and the release of dower interest in real estate which the owner has contracted to sell; and providing for institution of civil action for such release when spouse of owner is unable to execute a release or if the owner has used due diligence to ascertain the residence or whereabouts of his or her spouse, without effect.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DOWER.

§43-1-6. Proceedings for release of dower in real estate which owner has contracted to sell.

1 If the owner of real estate contracts to sell the same,
and the spouse of such owner refuses to release his or her
dower interest therein, or is unable to execute a release,
or if the owner has used due diligence to ascertain the
residence or whereabouts of his or her spouse, without
effect, the owner or the person contracting to purchase
may institute a civil action for the purpose of causing the
dower interest to be released and the contract consum-
ated. The court on the hearing may, in its discretion,
and if satisfied that the contract of sale was made in good
faith and without design to force such spouse to part with
his or her dower interest, approve the sale and price, and
cause to be paid to such spouse such gross sum, computed
according to the method provided in article two of this
chapter, as shall represent the present value of his or her
inchoate dower right: Provided, That in any action in
which it is alleged that the owner has used due diligence
to ascertain the residence or whereabouts of the spouse
and such spouse does not make an appearance therein, if
the court shall award the relief sought, it shall make in-
quiry regarding such due diligence, the sufficiency of
process, and the return of process served and make such
findings with respect thereto as affirmatively show en-
titlement to the relief granted. Upon payment of such
sum to the spouse of the owner, the court shall order a
release of the dower interest by such spouse, or if he or she
fails or refuses to execute the release, then the release
shall be executed by a special commissioner appointed
by the court for the purpose, which release shall be
effectual to pass title to the purchaser free of such right
of dower.

CHAPTER 66
(S. B. 270—By Mr. Colombo)

[Passed March 6, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article three-a, chapter twenty-
nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the authority
of fire departments; delineating authority of fire officers in charge of fire fighting and fire control; providing that person in command at fire scene may take and preserve certain property and for the return thereof; providing for court proceeding for restitution; relating to conducting an investigation to determine cause of fire; prohibiting person from attacking, hindering or obstructing fire fighters or emergency equipment; providing criminal penalties; and providing that nothing in this article shall be constructed to prevent law-enforcement officials from controlling traffic or otherwise maintaining order at the scene of a fire.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. AUTHORITY OF FIRE DEPARTMENTS.

§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency.

§29-3A-2. Person in command at fire scene may take and preserve certain property; restitution.

§29-3A-3. Conducting investigation to determine cause of fire.

§29-3A-4. Person attacking or hindering or obstructing fire fighter or emergency equipment; penalties.

§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency.

1 While any fire department recognized or approved by the West Virginia state fire commission is responding to, operating at or returning from a fire, fire hazard, service call or other emergency, the fire chief, any other elected or appointed fire line officer, or any member serving in the capacity of appointed fire line officer in charge, except on industrial property where trained industrial fire-fighting personnel are present, shall have the authority:

10 (1) Of controlling and directing fire fighting and fire control activities at such scene;

12 (2) To order any person or persons to leave any build-
ing or place in the vicinity of such scene for the purpose
of protecting such persons from injury;

(3) To blockade any public highway, street or private
right-of-way temporarily while at such scene;

(4) To enter the building, structure, enclosure or
other property of any person or persons at any time of
the day or night, without liability, while operating at
such scene;

(5) To enter any building, including private dwell-
ings, or upon any premises where a fire is in progress,
or where there is reasonable cause to believe a fire is
in progress, for the purpose of extinguishing the fire;

(6) To enter any building, including private dwellings,
or premises near the scene of the fire for the purpose
of protecting the building or premises or for the purpose
of extinguishing the fire which is in progress in another
building or premises;

(7) To inspect for preplanning, all buildings, struc-
tures or other places in their fire district, excepting,
however, the interior of a private dwelling, with the
consent of the owner or occupant, where any combustible
materials, including wastepaper, rags, shavings, waste,
leather, rubber, crates, boxes, barrels, rubbish or other
combustible material that is or may become dangerous
as a fire menace to such building or buildings, structure
or other places has been allowed to accumulate or where
such chief or his designated representative has reason to
believe that such material of a combustible nature has
accumulated or is liable to be accumulated;

(8) To direct the removal or destroying of any fence,
house, motor vehicle or other thing which may reason-
ably be determined to be necessary to be pulled down or
destroyed, to prevent the further spread of the fire;

(9) To request and be supplied with additional
materials such as sand, treatments, chemicals, etc., and
special equipment when dealing with an accident on a public highway or railroad right-of-way when it is deemed a necessity to prevent the further spread of the fire or hazardous condition, the cost of which to be borne by the owner of the instrumentality which caused the fire or hazardous condition; and

(10) To order disengagement or discouplement of any convoy, caravan or train of vehicles, craft or railway cars if deemed a necessity in the interest of safety of persons or property.

§29-3A-2. Person in command at fire scene may take and preserve certain property; restitution.

The chief of any fire department or company or any other elected or appointed fire line officer, the fire chief or any member serving in the capacity of appointed fire line officer in charge of fire fighters at the scene of any fire is authorized and empowered to take and preserve any property which indicates that the fire was intentionally set. Any person whose property is so held may petition the circuit court of the county within which the property was taken for return of the property, and the court may order restitution upon such conditions as are appropriate for the preservation of evidence, including requiring the posting of bond.

§29-3A-3. Conducting investigation to determine cause of fire.

To determine the cause of any fire, the chief of any fire department or company or other authorized fire fighter may enter the scene of such fire within a forty-eight-hour period after such fire has been extinguished.

If there is evidence that a fire was of incendiary origin, the fire chief or other authorized fire fighter may control who may enter the scene of such fire by posting no trespassing signs at such scene for a period of forty-eight hours after such fire has been extinguished.

During the period that the scene of a fire is posted against trespassing, no person shall enter such scene, except that an owner, lessee or any other person having
personal property at such scene may enter at any time after such scene has been declared safe by authorized fire department or company officials to recover or salvage personal property if said owner, lessee or person is accompanied by or is granted permission to enter such scene by an authorized fire department or company official.

§29-3A-4. Person attacking or hindering or obstructing fire fighter or emergency equipment; penalties.

It shall be unlawful, while any fire department or company or fire fighter is in the process of answering an alarm of fire or extinguishing a fire or returning to station, for any person to:

(1) Attack any fire fighter or fire-fighting equipment or emergency vehicles with any firearms, knives, fire bombs or any object endangering life or property; or

(2) Intentionally hinder any fire fighter in the performance of his duties or intentionally obstruct any fire-fighting equipment or emergency vehicle.

Any person violating the provisions of this section is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in the county jail not more than one year or fined not more than five hundred dollars, or both fined and imprisoned.

Any person willfully violating any of the provisions of section one or three of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars: Provided, That nothing in this article shall be construed to prevent law-enforcement officials from controlling traffic and otherwise maintaining order at the scene of a fire.
AN ACT to amend and reenact sections four, five, eight, ten, eleven, twelve, thirteen and fourteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to redefining the maximum rate of pay for persons employed to assist in detecting or extinguishing certain fires; removing the requirement for a specific annual appropriation for certain types of forest fire control; revising the hours for restricted burning; reducing the restrictions upon the director for effecting woods closure or a ban on burning; requiring railroad companies to perform certain fire prevention duties and imposing an assessment for noncompliance thereof; authorizing the recovery of certain costs incurred by the state in fighting fires from persons negligently causing fires; redefining forest lands; and renaming certain federal financial assistance legislation.

Be it enacted by the Legislature of West Virginia:

That sections four, five, eight, ten, eleven, twelve, thirteen and fourteen, article three, 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 3. FORESTS AND WILDLIFE AREAS.

§20-3-4. Authority and duties of director and others as to forest fires; expenditures for forest fire control.
§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.
§20-3-8. Duty of railroad company to protect against fires.
§20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires.
§20-3-11. Recovery of costs incurred in fighting fires.
§20-3-12. Timberland and forest land defined.
§20-3-13. Director authorized to secure federal cooperation; annual appropriation.
§20-3-14. Financial assistance from owners of forest lands; expenditures by director.

§20-3-4. Authority and duties of director and others as to forest fires; expenditures for forest fire control.

1 Upon receiving notice of any fire which is injuring or
endangering forest land within the state, the director, the state
deoer, or their duly authorized representative, shall employ
all necessary means to confine, extinguish or suppress the
fire. For these purposes such persons and their employees
shall, under the general supervision of the director, have the
right and authority to enter upon public or private lands, to
destroy fences thereon, to plow such lands, and in case of
extreme emergency, to set backfires thereon. The state
forester and any duly authorized representative may, under
the general supervision of the director, employ persons to
detect fires which may injure or endanger forest land, and
may likewise summon or employ persons to assist in
extinguishing such fires, who shall be paid for the actual time
so employed, at a rate per hour to be determined by the
director: Provided. That the rate per hour shall not exceed
the rate per hour paid for any comparable labor or skills by
the department of natural resources. Any person so summoned
who shall fail or refuse to assist in extinguishing any such fire
shall, unless such failure or refusal to assist is due to physical in-
ability, be guilty of a misdemeanor.

Expenditures for detecting, confining, extinguishing or
suppressing fires described in this section shall be charged
against the state. The state forester or his agent shall render to
the director, as soon as practicable, a sworn statement with
the names of all persons who were summoned or employed to
assist in fighting such fires, the time so spent by each, as well
as the names of persons who furnished equipment,
subsistence or supplies, or transportation therefor, and the
amount of money due each for such services, subsistence,
supplies or transportation. Requisitions shall be issued and
payment of the sums due shall be made in the same manner
as is provided for the making of other expenditures by the
director.

§20-3-5. Forest fire seasons; permits for fires; prohibited fires;
closure of forests.

The periods of each year between March first and May
thirty-first, inclusive, and October first and December
thirty-first, inclusive, are hereby designated as forest fire
seasons. No person shall during any such fire season, except
between the hours of five o'clock p.m. and ten o'clock a.m.
prevailing time, set on fire or cause to be set on fire any
forest land, or any grass, grain, stubble, slash, debris, or other
inflammable materials. Any fire set during this time shall be extinguished prior to 10:00 a.m. prevailing time. Such prohibition of fires between ten o'clock a.m. and five o'clock p.m. prevailing time shall not be construed to include (1) small fires set for the purpose of food preparation, or providing light or warmth around which all grass, brush, stubble, or other debris has been removed for a distance of ten feet from the fire, and (2) burning which may be conducted at any time when the ground surrounding the burning site is covered by one inch or more of snow. Any person who sets or causes to be set any fire permitted by this section shall not leave such fire unattended for any period of time.

The director or his designated appointees or employees may issue permits authorizing fires prohibited by the preceding paragraph. Such permits may be granted on such conditions and for such periods of time as the director deems necessary to prevent danger from fire to life or property, and noncompliance with any term of the permit shall be a violation of this section. Any permit which was obtained through willful misrepresentation shall be invalid. All permit holders shall take all necessary and adequate precautions to confine and control any fire permitted by the authorization; failure to take such action shall be a violation of this section and shall be justification for the director or his duly authorized representative to cancel the permit.

When the director considers it necessary to prevent danger from fire to life or property, he may, with the prior approval of the governor, prohibit the starting of and require the extinguishment of any fire in any area designated by the director, and such action may include any fire for which a permit has been issued under the preceding paragraph. In addition, if so deemed necessary, the director may, with the prior approval of the governor, designate any forest area as a danger area and prohibit entry thereon or use thereof except for the purposes and on the conditions he designates. The director by proclamation shall establish such areas and designate which fires are prohibited therein; and if a danger area is established, he shall announce the purposes for which and conditions under which entry thereon or use thereof may be made. Action hereunder may be taken by the director at any time during the year. Notice of any proclamation hereunder shall be furnished to newspapers, radio stations
and television stations which serve the area designated. The proclamation shall not be effective until twenty-four hours after it is proclaimed. Any proclamation hereunder shall remain in force until the director, with the approval of the governor, by order terminates it. The order shall designate the time of termination, and notice of any such order shall be furnished to each newspaper, radio station and television station which received a copy of the proclamation. Any person who starts or fails to extinguish a fire so prohibited or enters or uses a danger area otherwise than permitted shall be guilty of a violation of this section.

§20-3-8. Duty of railroad company to protect against fires.

1 Every railroad company or other company operating a steam, diesel or other type of locomotive shall clear, for a slope distance of twenty-five feet from the outside rail, or to the limits of the right-of-way if less than twenty-five feet, hazardous areas as designated by the state forester or his duly authorized representative, at least once a year, of all grass, brush, and other inflammable materials. Any such company that fails to remove said materials from such road or right-of-way shall be assessed by the department of natural resources five hundred dollars for each mile of road or right-of-way which is not maintained in accordance with this section. Any revenue derived from this section shall be deposited in the state treasury and credited to the department of natural resources and shall be used and paid out, upon order of the director, for forest fire prevention activities within the department of natural resources.

2 Each such company shall employ sufficient personnel to promptly put out fires on such road or right-of-way at times when such land is in a dry and dangerous fire condition. Each such company shall provide internal combustion engines of motive power other than steam used in road service, if not equipped with exhaust driven centrifugal turbocharger, shall have installed integral with the exhaust gas system, a spark-arresting device of a type certified according to the recommended practices of the association of American railroads and approved by the director so as to give the best practical protection against the escape of fire and sparks from the exhausts thereof.

29 No such company, or any employee thereof, shall deposit, cast, or discharge fire coals or ashes or any other material capable of igniting fires on that part of its road or right-of-way
which passes through forest land, or lands subject to fire from
any cause, unless the fire therein is immediately
extinguished. No such company, or employee thereof, shall
place a lighted fusee along such roads or rights-of-way in such
a manner as will cause the same to ignite inflammable
substances which may cause fire to spread to forest land. In
case of any uncontrolled or unguarded fire on such part of its
road or right-of-way, the company shall use all practicable
means to extinguish it even when the fire spreads to the
property of another. Engineers, conductors, trainmen, or
other persons who, while working for such companies,
discover or know of any fire on, along or near such part of the
road or right-of-way of their employer, shall report the same
as soon as possible to the state forester or his duly authorized
representative. Unless otherwise provided for by law, any
such company, or any officer or employee thereof, violating
any provision of this section, shall be guilty of a
misdemeanor.

§20-3-10. Spark arresters for sawmills, etc.; risk and hazard
reduction to protect against fires.

No person, firm or corporation shall use or operate on land
subject to fire by any cause, a sawmill, a power shovel, or an
engine or machine capable of throwing sparks, unless the
equipment is provided with an approved spark arrester.
Escape of fire from such equipment shall be prima facie
evidence that such appliance was not maintained properly in
compliance with this section.

Any person, firm or corporation owning any land and
knowing of inflammable waste disposal on said land, and any
person, firm or corporation using any land for the purpose of
inflammable waste disposal, shall remove annually all grass,
brush, debris and other inflammable material adjacent to
such disposal areas to provide adequate protection to prevent
the escape of fire to adjacent lands. Escape of fire from any
such disposal area shall be prima facie evidence that this
section had not been complied with.

Any person, firm or corporation violating any provision of
this section shall be guilty of a misdemeanor.

§20-3-11. Recovery of costs incurred in fighting fires.
The director shall, in the name of the state, recover from the
person or persons, firms or corporations whose negligence or
whose violation of any provision of this article caused any
fire at any time on grass or forest land, the amount expended
by the state for the personal services of persons especially
employed under the provisions of section four of this article
to control, confine, extinguish or suppress such fire, and the
costs associated therewith, including payment for the
personal services rendered by full-time state department of
natural resources employees, operating costs of state
equipment used and costs related thereto in controlling,
confining, extinguishing or suppressing such fire. Such
recovery shall not bar an action for damages by any other
person.

Any such fire which was caused by a trespasser or by a
person who was upon the property without the consent of the
owner shall not be deemed caused by the negligence of the
owner; but the owner shall use all practical means to confine,
extinguish or suppress any such fire on his land even though
it was caused by any such person. If he fails to do so, after
becoming aware of such fire, the director shall, in the name of
the state, recover from him amounts expended by the state
for the personal services of persons especially employed
under the provisions of section four of this article to control,
confine, extinguish or suppress such fire and the costs
associated therewith, including payment for the personal
services rendered by full-time state department of natural
resources employees, operating costs of state equipment used
and costs related thereto in controlling, confining,
extinguishing or suppressing such fire.

§20-3-12. Timberland and forest land defined.
For the purpose of this chapter, any land shall be
considered timberland or forest land which has enough
timber standing or down to constitute, in the judgment of the
department, a fire menace to itself or adjoining lands:
Provided, that nothing in this section contained shall be
construed to include lands under cultivation or in grass,
unless a fire thereon would imperil such lands or adjoining
lands.

§20-3-13. Director authorized to secure federal cooperation;
anual appropriation.
The director may do all things required to meet the
conditions and requirements of the federal government in
securing federal cooperation under the provisions of the
Weeks Law and the Cooperative Forestry Assistance Act of
§20-3-14. Financial assistance from owners of forest lands; expenditures by director.

The director may cooperate with the owners of forest lands and receive financial assistance from them for forestry purposes and do any and all things necessary therefor, including the establishment and maintenance of patrol and lookout stations: Provided, That the director shall expend for forestry purposes, and for no other purpose, such moneys as shall be appropriated therefor by the state, and such moneys as may be recovered from persons giving origin to grass or forest fires, and such moneys as may be received from the federal government by appropriation under the Weeks Law, the Cooperative Forestry Assistance Act of 1978 and any reference to the Clarke-McNary Law or otherwise.

CHAPTER 68

(Com. Sub. for H. B. 1130—By Mr. Givens)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing county, municipality or combined boards of health to charge for permits and licenses and to retain and utilize such funds collected for the provision of public health services.

Be it enacted by the Legislature of West Virginia:

That section six, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL HEALTH AGENCIES.

§ 16-2A-6. Levy for payment of county, municipal, combined boards of health; collection, receipt and disposition of funds by local boards of health.

The county commission of any county or the governing body of any municipality in which a county or municipal health officer is appointed pursuant to the provisions of this article, shall have the power and authority to provide funds for the payment of such health officer and the expenses of his administration, and for that purpose may levy a county or municipal tax, as the case may be, of not exceeding three cents on each one hundred dollars' assessed valuation of the taxable property in such county or municipality according to the last assessment thereof.

Any county or municipality may, whether it has exercised the power to lay the special levy hereinbefore provided for or not, appropriate and expend money from the county or municipal general fund for public health purposes and to pay the expenses of operation and administration of a county or municipal board of health and the public health facilities operated thereby or in conjunction therewith.

Any county or municipality in which there is a board of health created and maintained pursuant to the provisions of this article, may accept, receive and receipt for money or property from any federal, state or local governmental agency, or from any public or private source, to be used for public health purposes, or for the establishment or construction of public health facilities. The state department of health is hereby authorized and empowered to pay over and contribute to any board of health created and maintained pursuant to the provisions of this article such sum or sums of money as may be available from funds included in appropriations made for the state department of health for such purpose. The amount of any such payment or contribution by the state department of health to any such local board of health shall be determined in accordance with regulations established by the state board of health. Such regulations shall provide a fixed formula for determining the amount of any payment or
contribution, and this formula shall be uniformly applied in determining the amount of any payment or contribution to any such local board.

Notwithstanding any other provision of this chapter, any county, municipal or combined board of health, whether created and maintained pursuant to the provisions of this article or article two of this chapter, may assess and charge fees for permits and licenses for the provision of public health services: Provided, That no such fees may be assessed or charged pursuant to the provisions of this section for permits and licenses required for agricultural activities. Such fees shall be established by regulation promulgated in accordance with the provisions of chapter twenty-nine-a of the code, by the state board of health.

All moneys accepted by any county, municipality or combined board of health shall be deposited in the county or municipal treasury, and unless otherwise prescribed by the authority from which the money is received, shall be kept in separate funds, designated according to the purposes for which the money was made available, and held by the county or municipality in trust for such purposes: Provided, That nothing contained in this section shall be construed to conflict with the provisions of section fifteen, article one, chapter sixteen of this code.

Expenditures from the county or municipal public health funds established under this article shall be paid out by the county or municipal treasurer upon submission of vouchers approved by the county or municipal board of health and signed by the county or municipal health officer.

CHAPTER 69

(S. B. 80—By Mr. Galperin)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]
amended, by adding thereto a new section, designated section twelve-a, relating to vital statistics; providing for examination of newborn infants for physical and mental impairments; requiring registration of such information and information of previously undiagnosed impairments in minors with state registrar; providing for form to be supplied by state registrar; providing for confidentiality of such information; and providing exceptions whenever parental consent is given.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. VITAL STATISTICS.

§16-5-12a. Registration of infants born with congenital physical and mental impairments; requiring physician or midwife to check for defects, including visual impairments; registration of minors with previously undiagnosed impairments; form to be provided by state registrar; confidentiality; exceptions; parental consent.

1 When a live birth occurs, the physician or midwife in attendance at, or present immediately after, the birth shall examine the infant for any congenital physical or mental impairment, including visual impairment. If any such impairment is found in an infant, and/or if any such impairment is found in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife, or other health care provider licensed under chapter thirty of the code shall within thirty days of the examination make a report of the diagnosis to the state registrar of vital statistics on forms provided by the state registrar of vital statistics. The report shall include the name of the child, the name or names of the parents or parent or guardian and a description of the impairment.

16 The information received by the state registrar pur-
suant to this section pertaining to the identity of the
persons named shall be kept confidential: Provided, That
if consent of the parents, or if only one parent exists,
of the parent, or of the guardian is obtained, the registrar
may provide such information to the department of
health, the department of welfare, the department of
education, the division of vocational rehabilitation and
the school for the deaf and the blind so that such infor-
mation can be utilized to provide assistance or services
for the benefit of the child.

CHAPTER 70
(S. B. 466—By Mr. Wise)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article
five, chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to state registrar of vital statistics; increasing the maxi-
mum fee allowed to be charged for certified copies of
certificates or records and searches; and authorizing cer-
tain portion of fee to be deposited in special account.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, 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.

§16-5-28. Fees for copies and searches.

(a) The state director of the department of health
shall prescribe the fees, if any, to be charged and
collected by the state registrar of vital statistics, for
certified copies of certificates or records, not to exceed
five dollars per copy, or for a search of the files or records
when no copy is made: Provided, That the state registrar
shall, upon request of any parent or guardian, supply
without fee a certificate limited to a statement as to the
date of birth of any child when the same shall be neces-
sary for admission to school, or for the purpose of secur-
ing employment: Provided, however, That the state regis-
trar may furnish certified copies of birth and death
records to the state welfare department, and to organized
charities, free of charge, when such certificates are needed
in presenting claims to the federal government, or to
the state department of welfare, and an accurate record
shall be made of all such certificates so furnished.

(b) After the first day of July, one thousand nine hun-
dred eighty-two, and subject to the provisions set forth
in section two, article two, chapter twelve of this code,
there is established in the state treasury a separate ac-
count which shall be designated "the vital statistics
account."

The director of health shall promptly deposit two fifths
of all fees received under the provisions of this section to
the vital statistics account. The director of health shall
promptly deposit three fifths of all fees received under
the provisions of this section to the general revenue fund
account.

The director of health is authorized to expend the
moneys deposited in the vital statistics account in ac-
cordance with the laws of this state as is necessary to
implement this article. The Legislature shall appropriate
all moneys in the vital statistics account as part of the
annual state budget beginning with the fiscal year one
thousand nine hundred eighty-three—eighty-four.

The director shall make an annual report to the Legis-
lature on the vital statistics account, including the pre-
vious fiscal year's expenditures and projected expendi-
tures for the next fiscal year.
CHAPTER 71

(Com. Sub. for H. B. 1403—By Mr. Blackwell and Mr. Ketchum)

[Passed March 9, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to hospitals and similar institutions; and requiring these institutions to supply any patient, upon request, with one specifically itemized statement of charges assessed to the patient at the institution.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-9. Hospitals and similar institutions required to supply patients, upon request, with one specifically itemized statement of charges assessed to patient, at no cost to patient.

Any hospital, or other similar institution, required to be licensed under this article, upon request, shall supply to any patient who has received services from the hospital, whether on an inpatient or outpatient basis, one itemized statement which describes with specificity the exact service or medication for which a charge is assessed to the patient at the institution, at no additional cost to the patient. In the event of the death of any such patient, a relative or guardian may make such request and shall receive such statement at no additional cost.
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-d, relating to coordinating delivery of public and private continuum of care services within this state; setting forth the legislative intent; definitions; creating state policy board for continuum of care for elderly, disabled and terminally ill including representatives from public and private providers and consumers; providing for meetings and election of officers; allowing the commissioner of the state department of welfare, and the directors of the state departments of health, commission on aging, division of vocational rehabilitation and the insurance commissioner to designate employees to carry out work of board; delineating the board’s purposes; directing the board to establish and promote a comprehensive program for terminally ill; directing the board to evaluate the program and report to Legislature; authorizing application and acceptance of funds for implementation of the program; promul­gation of rules and regulations; requiring insurance carriers to make available supplemental insurance to cover the whole continuum of care; and providing for pilot project for single point of entry and care management for continuum of care for elderly.

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 mended, be amended by adding thereto a new article, designated article five-d, to read as follows:

ARTICLE 5D. COORDINATION OF CONTINUUM OF CARE SERVICES FOR ELDERLY, IMPAIRED AND TERMINALLY ILL.

§16-5D-1. Legislative intent.
§16-5D-2. Definitions.
§16-5D-3. Creation and composition of continuum of care board.
§16-5D-4. Quorum; officers; meetings; designation of employees to carry out work of board.

§16-5D-5. Purposes of board.

§16-5D-6. Availability of hospice care program.

§16-5D-7. Program evaluation; consultation.

§16-5D-8. Application for federal aid and other grant assistance; acceptance of funds.


§16-5D-10. Insurance.

§16-5D-11. Pilot project for single point of entry and case management.

§16-5D-1. Legislative Intent.

1 The Legislature hereby declares it to be the policy of this state to establish, encourage and promote the availability and delivery of continuum of care services within the state and its communities to the elderly, disabled, terminally ill and their families.

2 It is the further intention of the Legislature that within the system of continuum of care particular attention be given to establishing, encouraging and promoting a system of care that provides alternatives and personal freedom for the terminally ill and their families. The Legislature further intends that the terminally ill and their families have access to, and receive, a comprehensive and coordinated program of home and inpatient care which treats the patient and family as a unit, providing palliative and supportive care to meet the special needs arising out of the physical, psychological, spiritual, social and economic stresses experienced during the final stages of illness and the period of bereavement.

3 The Legislature recognizes the present problems involved in the delivery of such continuum of care services to the elderly, disabled, terminally ill and their families and intends to provide for coordinated effort, among the West Virginia department of health, West Virginia department of welfare, the West Virginia commission on aging and the West Virginia division of vocational rehabilitation as well as other public and private and other providers of such continuum of care services, in order to achieve for the integration of the delivery of those services at both the state and local levels so as to ensure maximum availability of such services in all communities of this state.
§16-5D-2. Definitions.

As used in this article:

1. "Case management" means assessing individually a client or beneficiary's situation and identifying the services necessary to meet those needs, including, but not limited to, procurement of services such as counseling, providing information to link the person needing help to available community and institutional services and coordinating an assessment of a client's service and medical or other needs, developing a service plan with the cooperation of the client and family, which includes objectives to meet the client's service needs, specified services to meet those objectives and identifies available services; arranging for implementation of the service plan, including service delivery arrangements with the client, and providing for appointments and transportation thereto; developing a process for monitoring the service or component of service a client receives; evaluating the impact of services and their components on the client; developing a feedback mechanism to the provider, to the community and to the board which identifies the need for the development of new services and the expansion or elimination of existing services, including documentation in the service plan of gaps or barriers between client service needs and effective available providers; and assuring continuity of care for the client and the monitoring of changes in the client's service needs, to ensure that services are provided in an appropriate manner and to identify and correct problems within the service system that prevent the client from receiving needed services.

2. "Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration which provides palliative and supportive medical and other health services to terminally ill patients and their families. Hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs which are experienced during the final stages of illness, and during dying and bereavement.
(3) "Interdisciplinary team" means the patient and the patient's family, the attending physician and the following hospice personnel: Physician, nurse, social worker, clergy and trained volunteer. Providers of special services, such as mental health, pharmaceutical and any other appropriate allied health services may also be included on the team as the needs of the patient dictate.

(4) "Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process, rather than treatment designed for investigation and intervention for the purpose of cure or prolongation of life.

(5) "Provider" means any public or private agency or individual which offers continuum of care services to the elderly, disabled or terminally ill.

(6) "Continuum of care" means a system of services such as nursing, medical and other health and social services available to an individual in an appropriate setting over an extended period of time as a result of such individuals changing health status.

(7) "Disabled" means a person who has temporary or permanent impairments which cause him to need or who is likely, in the foreseeable future, to need services within the continuum of care.

§16-5D-3. Creation and composition of continuum of care board.

There is hereby created a state continuum of care board for the elderly, disabled and terminally ill, hereinafter referred to as the board. The board shall consist of the commissioner of the West Virginia department of welfare, the director of the West Virginia department of health, the director of the West Virginia commission on aging, the insurance commissioner of West Virginia and the director of the West Virginia division of vocational rehabilitation or their respective designees.

In addition, such commissioners and directors shall at their discretion appoint not less than four, nor more than six addi-
tional members to the board. In appointing such additional members, the commissioners and directors shall appoint in equal numbers individuals representing private providers of continuum of care services and individuals representing consumers of continuum of care services. Of the individuals representing providers, at least one shall be a registered professional nurse and at least one shall be a physician licensed to practice medicine in this state who regularly treats long-term care patients. Of the individuals representing consumers, at least one shall be an immediate relative of a continuum of care patient at the time of his or her appointment. Such additional members shall serve at the will and pleasure of the commissioners and directors on the board.

§16-5D-4. Quorum; officers; meetings; designation of employees to carry out work of board.

A majority of the board shall constitute a quorum for transaction of business. The board shall elect a chairman and such other officers as it shall deem necessary. Board meetings shall be held upon call of the chairman or a majority of its members.

The commissioner of the department of welfare, director of the department of health, the director of the commission on aging, the insurance commissioner and the director of the division of vocational rehabilitation shall have authority to designate employees within their respective departments as in their judgment may be necessary to carry out the work of the board, assisted by such representatives of private providers as the board may determine necessary or advisable.

§16-5D-5. Purposes of board.

(a) The board shall:

(1) Establish standards for coordination of delivery of services to the elderly, disabled and terminally ill by public and private providers of both the state and local levels; and

(2) Establish standards and procedures for case management at the local level expressly recognizing the aid of the independent community based providers, to ensure availability, coordination and delivery of services to the intended beneficiaries thereof.
(b) In addition, the board shall take action to carry out the following purposes:

(1) To ensure the implementation of the established standards and to regularly evaluate such implementation;

(2) To ensure that public funds are used to direct care to those determined to be most in need of services;

(3) To ensure that each prospective beneficiary receive a comprehensive and individual assessment of services needed;

(4) To ensure that each prospective beneficiary be made aware of the spectrum of services available, including, but not limited to, the least restrictive environment;

(5) To ensure that a comprehensive plan of care be developed for each beneficiary of the providers;

(6) To ensure the creation, and to promote the availability of an alternative form of care for the terminally ill known as "hospice care" providing a comprehensive and coordinated program of home and inpatient care for terminally ill;

(7) To constantly monitor the formulation and implementation of the delivery of services to the elderly, disabled and terminally ill;

(8) To document the community based long-term care services currently available to elderly, disabled and terminally ill;

(9) To identify the number of elderly, disabled and terminally ill in this state who are currently at risk of institutionalization;

(10) To identify informal supports provided by the families and friends of elderly, disabled and terminally ill persons and suggest methods for maintaining and expanding those supports;

(11) To design and effectuate a system of comprehensive, coordinated care using a full range of health and social services without gaps or duplication according to the needs of each beneficiary through individual assessment and case management; and
(12) To educate the general public with regard to continuum of care in an effort to attract volunteers.

§16-SD-6. Availability of hospice care program.

The board shall, consistent with the continuum of care concept and within the limits of federal and private funding therefor, establish, promote and make available within this state a comprehensive hospice care program for the treatment of physical, emotional and mental symptoms of terminal illness. Such program shall encourage and provide funds for the formation of community based hospice programs which include interdisciplinary teams for coordinating home care and inpatient services. Where possible, the community based hospice programs shall utilize the existing resources of physicians, nurses, social workers, clergy, physical therapists and facilities to create the interdisciplinary approach consistent with the hospice care concept.

§16-SD-7. Program evaluation; consultation.

The board shall conduct an evaluation of the hospice care program and report its findings and recommendations to the governor and Legislature no later than the first day of July, one thousand nine hundred eighty-four. Such evaluation shall include, but not be limited to, an assessment of the following:

(1) The quality and cost effectiveness of use of layperson volunteers for hospice care, hospice care compared to traditional care for the terminally ill and institutional compared to in-home hospice care;

(2) The current and projected demand for hospice care and need for construction of hospice facilities or the use of existing facilities;

(3) The current statutory provisions which regulate the manufacture, distribution and dispensing of controlled substances; and

(4) The need to provide alternative means of financially assisting terminally ill patients who are not able to afford such services.
§16-5D-8. Application for federal aid and other grant assistance; acceptance of funds.

The board shall, to the maximum extent possible, apply for any available federal health care funding and grant programs and any other assistance provided by any private or national health care agency or organization, and make such funds available to qualified private community based hospice programs, provided such programs meet the standards established by the board under the provisions of this article. The board may accept gifts, grants and bequests of funds from individuals, foundations, corporations and other organizations for use in implementing the provisions of this article.


The board, in collaboration with governmental and independent community based delivery level personnel, shall promulgate rules and regulations pursuant to the provisions of chapter twenty-nine-a of this code to effectuate the purposes of this article.

§16-5D-10. Insurance.

Not later than the first day of July, one thousand nine hundred eighty-three, every insurance carrier who shall offer for sale in this state any policy of health or accident and sickness insurance, shall make available for purchase at a reasonable rate supplemental insurance coverage for continuum of care services.

§16-5D-11. Pilot project for single point of entry and case management.

Within the limits of available funds and by use of existing staff and agencies, both public and private, the board shall establish in a county of its choice within this state a program within the continuum of care system for the elderly which incorporates a single focal point for entry into the system and case management.

Within the county so chosen, the board shall enter into an agreement with a public or private provider charging such provider with the responsibility of formulating, directing and
administering such program consistent within the guidelines established by the board and the purposes of this article.

The provider charged with such responsibilities shall report regularly to the board regarding the progress of such program, and the board shall continually monitor same. Additionally, the board shall submit a comprehensive report on the feasibility of establishing a similar statewide program for the entire continuum of care to the governor and the Legislature no later than the first day of July, one thousand nine hundred eighty-four.

CHAPTER 73
(H. B. 2035—By Mr. Knight and Mr. Steptoe)

[Passed March 12, 1982; 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 five-g, relating to requiring the proceedings of the governing bodies of nonprofit and local governmental hospitals to be open to the public.

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-g, to read as follows:

ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS:
§16-5G-1. Declaration of legislative policy.
§16-5G-2. Open proceedings.

§16-5G-1. Declaration of legislative policy.

The Legislature hereby finds and declares that hospitals owned or operated by nonprofit corporations, nonprofit associations or local governmental units are relied on by the citizens of this state for services essential to their health and well-being. The Legislature further finds and declares that
public funds from various sources and by various means contribute significantly to the revenues and operations of such institutions. Therefore, it is in the best interest of the people of this state for all proceedings of the boards of directors or other governing bodies of such hospitals to be conducted in an open and public manner so that the people can remain informed of the decisions and decision making processes affecting the health services on which they so vitally depend and which they help support through tax exemptions, public funding and other means.

§16-5G-2. Open proceedings.

Every board of directors or other governing body of any hospital owned or operated by a nonprofit corporation, nonprofit association or local governmental unit shall be open to the public in the same manner and to the same extent as required of public bodies in article nine-a, chapter six of this code.

CHAPTER 74

(Com. Sub. for H. B. 1997—By Mr. Schifano)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to the powers of public service districts generally; and limiting the right of such public service districts to foreclose upon the premises served by such districts.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine-a, to read as follows:
ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-9a. Limitations with respect to foreclosure.

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

CHAPTER 75

(S. B. 72—By Mr. Wise)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article twenty-two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the detection and control of phenylketonuria and hypothyroidism in newborn children; adding galactosemia.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article twenty-two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 22. DETECTION AND CONTROL OF PHENYLKETONURIA, GALACTOSEMIA, AND HYPOTHYROIDISM IN NEWBORN CHILDREN.

§16-22-1. Findings.
§16-22-2. Program to combat mental retardation; rules and regulations; facilities for making tests.
§16-22-3. Tests for phenylketonuria; galactosemia and hypothyroidism; reports; assistance to afflicted children.

§16-22-1. Findings.

1 The Legislature finds that phenylketonuria, galactosemia and hypothyroidism, genetic defects affecting body metabolism, are usually associated with mental retardation. Laboratory tests are readily available to aid in the detection of these diseases and the hazards to health of those suffering thereof may be lessened or prevented by early detection and treatment. Damage from these diseases, if untreated in the early months of life, is usually rapid and not appreciably affected by treatment.

§16-22-2. Program to combat mental retardation; rules and regulations; facilities for making tests.

1 The state department of health is hereby authorized to establish and carry out a program designed to combat mental retardation in our state's population due to phenylketonuria, galactosemia and hypothyroidism, and may adopt reasonable rules and regulations necessary to carry out such a program. The department of health shall establish and maintain facilities at its state hygienic laboratory for testing specimens for the detection of phenylketonuria, galactosemia and hypothyroidism. Tests shall be made by such laboratory of specimens upon request by physicians, hospital medical personnel and other individuals attending newborn infants. The state department of health is authorized to establish additional laboratories throughout the state to perform tests for the detection of phenylketonuria, galactosemia and hypothyroidism.

§16-22-3. Tests for phenylketonuria, galactosemia and hypothyroidism; reports; assistance to afflicted children.

1 The physician attending a newborn child or any person
attending a newborn child not under the care of a physician shall cause to be made a test for phenylketonuria, galactosemia and hypothyroidism approved by the state department of health. Any test found positive for phenylketonuria, galactosemia or hypothyroidism shall be promptly reported to the state department of health by the director of the laboratory performing such test.

The state department of health, in cooperation with other state departments and agencies, and with attending physicians, is authorized to provide medical, dietary and related assistance to children determined to be afflicted with phenylketonuria, galactosemia or hypothyroidism.

CHAPTER 76
(H. B. 1368—By Mr. Stephens and Mr. Moore)

(Passed February 26, 1982; in effect ninety days from passage. Approved by the Governor.)

AN ACT to repeal section one-b, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article two, relating to legal holidays, official acts or court proceedings, designation of Martin Luther King’s birthday as a legal holiday.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

The following days shall be regarded, treated and observed as legal holidays, viz: The first day of January, commonly called “New Year’s Day”; on and after the fifteenth day of January, one thousand nine hundred eighty-three, the fifteenth day of January, commonly called “Martin Luther King’s
Birthday”; the twelfth day of February, commonly called “Lincoln’s Birthday”; the third Monday of February, commonly called “Washington’s Birthday”; the last Monday in May, commonly called “Memorial Day”; the twentieth day of June, commonly called “West Virginia Day”; the fourth day of July, commonly called “Independence Day”; the first Monday of September, commonly called “Labor Day”; the second Monday of October, commonly called “Columbus Day”; the eleventh day of November, hereafter referred to as “Veterans Day”; the fourth Thursday of November, commonly called “Thanksgiving Day”; the twenty-fifth day of December, commonly called “Christmas Day”; any national, state or other election day throughout the district or municipality wherein the election is held; and all days which may be appointed or recommended by the governor of this state, or the president of the United States, as days of thanksgiving, or for the general cessation of business; and when any of these days or dates falls on a Sunday, then the succeeding Monday shall be regarded, treated and observed as the legal holiday.

When the return day of any summons or other court proceeding or any notice or time fixed for holding any court or doing any official act shall fall on any of these holidays, the next ensuing day which is not a Saturday, Sunday or legal holiday shall be taken as meant and intended: Provided, That nothing herein contained shall increase nor diminish the legal school holidays provided for in section two, article five, chapter eighteen-a of this code.

CHAPTER 77

(Com. Sub. for S. B. 473—By Mr. Steggers and Mr. Steptoe)

[Passed March 12, 1982; 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 twelve-a, relating to pari-mutuel wagering on interstate and intrastate horse and dog racing at racetracks operated by licensed racing associations.

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 twelve-a, to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.

1 (1) Notwithstanding any other provisions of this code, a racing association licensed in this state to conduct race meetings may, with the consent of the racing commission, contract with any legal wagering entity in this or any other state to accept wagers on any race or races conducted by such legal wagering entity. Such wagering shall be conducted within the confines of such licensee’s racetrack unless the wager becomes part of the host racing association’s pari-mutuel pool.

2 (2) Such horse association shall retain a basic commission not to exceed seventeen and twenty-five one-hundredths percent of all money wagered, plus an additional amount equal to one and seventy-five one-hundredths percent of the amount wagered each day on all multiple wagers determined by a combination of two winning horses, including, but not limited to, the daily double, quinella and perfecta or plus an additional amount equal to seven and seventy-five one-hundredths percent of the amount wagered each day on all trifecta wagers or any other multiple wager which involves a single betting interest on three or more horses. Breakage shall be calculated and distributed in the manner provided by subsection (c), section nine of this article.

3 (3) The commission deducted by any licensee from the pari-mutuel pools on dog racing shall not exceed sixteen and one-fourth percent of the total of such pari-mutuel pools for the day.
(4) The association shall pay each day a pari-mutuel pools tax calculated under the provisions of section ten of this article.

(5) After deducting the pari-mutuel pools tax required by subsection (4) of this section, and the amount required to be paid under the terms of the contract with the legal wagering entity of this or another state and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (b) (1), section nine of this article.

(6) All of the provisions of the "Federal Interstate Horse Racing Act of 1978," also known as Public Law 95-515, section 3001-3007 of Title 15, U. S. Code, shall be instructive as the intent of this section.

(7) For the purposes of this section the words "legal wagering entity" shall be limited to any person engaged in horse racing or dog racing pursuant to a license or other permission granted by the state in which such person's racetrack is situated and conducting race meetings, with a pari-mutuel wagering system permitted under that state's laws and in which the participants are wagering with each other and not the operator.

CHAPTER 78
(S. B. 547—By Mr. Staggers and Mr. Steptoe)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; disposition of money from unredeemed pari-mutuel tickets at horse and dog race meetings.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUTSTANDING AND UNREDEEMED PARI-MUTUEL TICKETS; IRREDEEMABLE TICKETS; AWARDS.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; awards to resident owners, etc., of winning horses and dogs.

1 (a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of the horse or dog race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemable tickets. All such moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account—Unredeemed Pari-mutuel Tickets.” Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of such notice. Such notice shall be published within fifteen days following the receipt of said moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area
for such publication shall be the county in which such horse or dog race meeting was held.

(b) Any such pari-mutuel tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such pari-mutuel tickets shall become the property of the racing commission, and shall be expended as follows:

(1) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that the owner of such horse is at the time of such horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he filed a personal income tax return in this state for the previous two years and that he owned real or personal property in this state and paid taxes in this state on said property for the two previous years, he shall be presumed to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that the mare foaled in this state, a sum equal to ten percent of the purse won by such horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that the mare which foaled such winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by such horse; and

(4) When the moneys in the special account, known as the "West Virginia Racing Commission Special Account—Unredeemed Pari-mutuel Tickets" will more than satisfy the requirements of subdivisions (1), (2) and (3), subsection (b) of this section, the West Virginia
racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing dog racing handicaps at the dog tracks:

(c) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid.

(d) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

CHAPTER 79

(S. B. 548—By Mr. Staggers and Mr. Steptoe)

[Passed March 13, 1982; in effect ninety days 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 thirteen-a, relating to establishment of a bonus race fund for West Virginia bred or sired horses.

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 thirteen-a, to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-13a. West Virginia bonus race fund.

1 An association licensed by the West Virginia racing
commission to conduct horse race meetings may establish
at its track a special fund to be known as the "Bonus
Race Fund," in the manner hereinafter provided by this
section.

The fund shall be established only if written approval
is given by the duly authorized representative of a
majority of the owners and trainers who hold the permit
required by section eight of this article at the horse race-
track and by the authorized agent of the association.

The association shall deposit each day, into the fund
hereby established, an amount equal to one tenth of one
percent of the total daily pari-mutuel pool or pools, which
sum shall be appropriated from the special purse fund
established in subsection (b) (1), section nine of this
article. In addition thereto, the association shall, from
the commission retained by the association under the
provisions of said section nine of this article, deposit
into the "Bonus Race Fund" the following sums: Each
day an amount equal to four one-hundredths of one per-
cent of the total daily pari-mutuel pool during the fiscal
year beginning the first day of July, one thousand nine
hundred eighty-two and each year thereafter; an addi-
tional three one-hundredths of one percent of the total
daily pari-mutuel pools for the fiscal year beginning the
first day of July, one thousand nine hundred eighty-three
and each year thereafter; and an additional three one-
hundredths of one percent of the total daily pari-mutuel
pools for the fiscal year beginning the first day of July,
one thousand nine hundred eighty-four and each year
thereafter.

To be eligible to participate in purses to be paid from
the proceeds of this fund, each horse must be registered
with the West Virginia thoroughbred breeders associa-
tion. To qualify for such registration the said horse must
have been foaled in the state of West Virginia or sired
by a stallion standing in the state of West Virginia or
both foaled in West Virginia and sired by a stallion
standing in West Virginia.

(a) A horse is bred where it is foaled. The breeder is
the owner of the dam at the time of foaling.
(b) Any owner or breeder may appeal from the refusal of the West Virginia thoroughbred breeders association to register a horse under this rule to the West Virginia racing commission, and the decision of the commission shall be final.

(c) To be considered a West Virginia stallion, it is required that he be in the state of West Virginia for at least one full breeding season, commonly understood to be the first six months of a year, or if the stallion is brought in subsequent to the start of the breeding season, he must be approved as a West Virginia stallion by the West Virginia thoroughbred breeders association.

At each horse racetrack at which such fund is created, the funds shall be administered by a committee comprised of the following members: Two elected members of the West Virginia thoroughbred breeders association, one elected member of the local horsemen's benevolent protective association, the general manager of the local track or his representative and a member of the West Virginia racing commission or someone designated by the racing commission.

The powers and authority of the racing commission established under the provisions of section six of this article are extended to supervision of the fund created by this section and to the promulgation of reasonable rules and regulations for implementing and making effective the provisions of this section.

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**CHAPTER 80**

(H. B. 1026—By Mr. Farley and Mr. Albright)

[Passed January 29, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to restricting the exercise of the right of eminent domain by the West Virginia housing development fund; setting forth
required allegations and proof in condemnation proceedings; prohibiting the taking of land used for agricultural production; and providing that should the acreage limitation be unconstitutional or invalid, the powers of eminent domain shall not be exercised.

Be it enacted by the Legislature of West Virginia:

That article one, chapter fifty-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 five-a, to read as follows:

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-5a. Restrictions as to the exercise of the right of eminent domain by the West Virginia housing development fund.

1. (1) The West Virginia housing development fund, in exercising the power of eminent domain as provided for in section six, article eighteen, chapter thirty-one of this code, shall allege and prove, and the trier of fact shall find, in addition to other requirements of the law, the following:

   (a) That resort is had to condemnation proceedings only after all other reasonable alternatives for acquisition of the site in question have been explored and found impractical;

   (b) That the housing sought to be developed on the site in question is necessitated by circumstances existing in the local community or area where the site is located as follows:

      (i) An extreme shortage of land suitable for housing exists in the local community or area and that no practical alternative site is available for purchase by negotiation;

      (ii) A serious shortage of housing exists in the local community or area, as evidenced by an insufficient number of housing units, by low vacancy rates, or by a high proportion of substandard or overcrowded housing;

      (iii) An open, active and free market for adequate housing does not exist in the local community or area;

      (iv) The real property which is the subject of the proposed condemnation proceeding is not a part of, or contiguous to, the owner's principal residence or the curtilage thereof; and
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(v) The owner of the real property which is the subject of
the condemnation proceeding is seized of title to the surface of
five thousand acres of land or more within this state, without
reduction for any lease, license or easement to which the estate
may be subject: Provided, That any portion of the five
thousand acres or more of land which is being used or
operated in the production of agricultural products by the
owner or his lessee (under a bona fide written lease executed
and delivered prior to the institution of a proceeding in
condemnation subject to the restriction provided in this
section) shall not be taken by condemnation under the pro-
visions of this section. In the case of a corporate owner, the
court shall aggregate the holdings of the corporation, the
holdings of other corporate bodies which have legally en-
forceable control of a majority of the shares of the corporate
owner, and the holdings of other corporate bodies which have
a majority of their shares subject to the legally enforceable
control of the corporate owner. Such aggregate holdings shall
be used to determine whether the corporate owner owns five
thousand acres of land or more within this state.

(2) If, for any reason, the provisions of subdivision (b),
subsection (1) of this section are held unconstitutional or in-
valid, then upon the finding of such unconstitutionality or
invalidity, the West Virginia housing development fund shall
not exercise the powers of eminent domain provided for in
section six, article eighteen, chapter thirty-one of this code.

CHAPTER 81

(S. B. 337—By Mr. Colombo and Mr. Gainer)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter
twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to natural resources;
definitions; and defining “bona fide resident tenant or lessee,”
“wild boar” and “sauger.”
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

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

"Agency" means any branch, department or unit of the state government, however designated or constituted.

"Alien" means any person not a citizen of the United States.

"Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any licensee.

"Board" means the water resources board of the department of natural resources.

"Bona fide resident tenant or lessee" means a person who permanently resides on the land.

"Citizen" means any native born citizen of the United States, and foreign-born persons who have procured their final naturalization papers.

"Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

"Commission" means the natural resources commission.

"Commissioner" means a member of the advisory commission of the natural resources commission.

"Director" means the director of the department of natural resources.

"Fishing" or "to fish" means the taking, by any means, of fish, minnows, frogs, or other amphibians, aquatic turtles, and other forms of aquatic life used as fish bait.

"Fur-bearing animals" shall include (a) the mink, (b) the weasel, (c) the muskrat, (d) the beaver, (e) the opossum, (f) the skunk, and civet cat, commonly called polecat, (g) the otter, (h) the red fox, (i) the gray fox, (j) the wildcat, bobcat or bay lynx, (k) the raccoon and (l) the fisher.

"Game" means game animals, game birds and game fish as herein defined.

"Game animals" shall include (a) the elk, (b) the deer, (c) the cottontail rabbits and hares, (d) the fox squirrels, commonly
called red squirrels, and gray squirrels, and all their color
phases—red, gray, black or albino, (e) the raccoon, (f) the
black bear and (g) the wild boar.

"Game birds" shall include (a) the Anatidae, commonly
known as swan, geese, brants and river and sea ducks, (b) the
Rallidae, commonly known as rails, sora, coots, mudhens,
and gallinaceae, (c) the Limicolae, commonly known as
shorebirds, plover, snipe, woodcock, sandpipers, yellow legs,
and curlews, (d) the Galli, commonly known as wild turkey,
grouse, pheasants, quails and partridges (both native and
foreign species), and (e) the Columbidae, commonly known
as doves and the Icteridae, commonly known as blackbirds,
redwings and grackle.

"Game fish" shall include (a) brook trout, (b) brown trout,
(c) rainbow trout, (d) golden rainbow trout, (e) Kokanee
salmon, (f) largemouth bass, (g) smallmouth bass, (h)
Kentucky or spotted bass, (i) striped bass, (j) pickerel, (k)
muskellunge, (l) walleye pike, or pike perch, (m) northern
pike, (n) rock bass, (o) white bass, (p) white and black crappie,
(q) all sunfish, (r) channel and flathead catfish and (s) sauger.

"Hunt" means to pursue, chase, catch or take any wild birds
or wild animals.

"Lands" means land, waters, and all other appurtenances
connected therewith.

"Migratory birds" means any migratory game or nongame
birds included in the terms of conventions between the
United States and Great Britain and between the United
States and United Mexican States, known as the "Migratory
Bird Treaty Act," for the protection of migratory birds and
game mammals concluded, respectively, August sixteen, one
thousand nine hundred sixteen, and February seven, one
thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the
United States and who has not been a domiciled resident of
the state of West Virginia for a period of thirty consecutive
days immediately prior to the date of his application for a
license or permit except any full-time student of any college
or university of this state, even though he be paying a
nonresident tuition.

"Open season" means the time during which the various
species of wildlife may be legally caught, taken, killed or
chased in a specified manner, and shall include both the first
and the last day of the season or period designated by the
director.

"Person," except as otherwise defined elsewhere in this
chapter, means the plural "persons," and shall include
individuals, partnerships, corporations, or other legal entity.

"Preserve" means all duly licensed private game farmlands,
or private plants, ponds or areas, where hunting or fishing is
permitted under special licenses or seasons other than the
regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within
the definition of "game birds" and "unprotected birds."

"Resident" means any person who is a citizen of the United
States and who has been a domiciled resident of the state of
West Virginia for a period of thirty consecutive days or more
immediately prior to the date of his application for a license or
permit: Provided, That a member of the armed forces of the
United States who is stationed beyond the territorial limits of
this state, but who was a resident of this state at the time of
his entry into such service, and any full-time student of any
college or university of this state, even though he be paying a
nonresident tuition, shall be considered a resident under the
provisions of this chapter.

"Roadside menagerie" means any place of business, other
than commercial game farm, commercial fish preserve, place
or pond, where any wild bird, game bird, unprotected bird,
game animal or fur-bearing animal is kept in confinement for
the attraction and amusement of the people for commercial
purposes.

"Take" means to hunt, shoot, pursue, lure, kill, destroy,
catch, capture, keep in captivity, gig, spear, trap, ensnare,
wound or injure any wildlife, or attempt to do so.

"Unprotected birds" shall include (a) the English sparrow,
(b) the European starling, (c) the cowbird, and (d) the crow.

"Wild animals" means all mammals native to the state of
West Virginia occurring either in a natural state or in
captivity, except house mice or rats.

"Wild birds" shall include all birds other than (a) domestic
poultry—chickens, ducks, geese, guinea fowl, peafowls and
turkeys, (b) psittacidae, commonly called parrots and
parakeets, and (c) other foreign cage birds such as the
common canary, exotic finches and ring dove. All wild birds,
either (a) those occurring in a natural state in West Virginia or
(b) those imported foreign game birds, such as waterfowl,
pheasants, partridges, quail and grouse, regardless of how
long raised or held in captivity, shall remain wild birds under
the meaning of this chapter.

"Wildlife" means wild birds, wild animals, game and
fur-bearing animals, fish (including minnows), frogs and
other amphibians, aquatic turtles and all forms of aquatic life
used as fish bait, whether dead or alive.

"Wildlife refuge" means any land set aside by action of the
director as an inviolate refuge or sanctuary for the protection
of designated forms of wildlife.

AN ACT to amend and reenact section five-a, article two, chapter
twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to wildlife resources;
and to replacement fees for wildlife and forfeiture procedures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5a. Forfeiture by person causing injury, death or destruction
of game or protected species of animal; replacement
values thereof; forfeiture procedures.

Any person who is convicted of violating any criminal law
of this state and the violation causes or results in the injury,
death or destruction of game, as defined in section two,
article one of this chapter, or a protected species of animal,
in addition to any other penalty to which he is subject, shall
forfeit the cost of replacing such game or protected species
of animal to the state. For such purpose, replacement values for game and protected species of animals are as follows:

(1) For each game fish or each fish of a protected species taken illegally other than by pollution kill, five dollars for each pound and any fraction thereof;

(2) For each bear, elk or eagle, five hundred dollars;

(3) For each deer or raven, two hundred dollars;

(4) For each wild turkey, hawk or owl, one hundred dollars;

(5) For each beaver, otter or mink, twenty-five dollars;

(6) For each muskrat, raccoon, skunk or fox, fifteen dollars;

(7) For each rabbit, squirrel, opossum, duck, quail, woodcock, grouse or pheasant, ten dollars; and

(8) For each wild boar, two hundred dollars; and

(9) For any other game or protected species of animal, ten dollars each.

The court upon convicting such person shall order him to forfeit to the state the proper amount based on the values set forth herein for the game or protected species of animal the injury, death or destruction of which he caused or which resulted from his criminal act. If two or more defendants are convicted for the same violation causing, or resulting in, the injury, death or destruction of game or protected species of animal, the forfeiture shall be declared against them jointly and equally. The forfeiture shall be paid by the person so convicted and ordered to pay the forfeiture within the time prescribed by the court, but not exceeding sixty days. In each instance, the court shall pay such forfeiture to the state treasury where it shall be credited to the department of natural resources to be used only for the replacement, habitat management or enforcement programs for injured, killed or destroyed game or protected species of animal.
AN ACT to amend and reenact section thirteen, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the restriction that the director of the department of natural resources shall not issue permits for the transportation and importation of foxes and fishers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.


1 No person shall transport into or have in his possession within this state any live wildlife or viable eggs thereof from without the state, except as authorized by an importation permit issued by the director: Provided, That the director shall not be authorized to issue a permit to any person to transport into this state any coyotes (Canis latrans). The director may issue at his discretion such permit as he is authorized to issue, fix the terms thereof and revoke it at his pleasure.

10 Importers of fish or viable eggs of the family salmonidae (trout, char, salmon) shall furnish a statement from a recognized fish pathologist certifying the source to be free of whirling disease, infectious pancreatic necrosis, viral hemorrhagic septicemia or other diseases which may threaten fish stocks within the state.

16 Importers of wildlife species shall furnish disease free certification from pathologists, or veterinarians, as the director deems necessary to protect native populations.
All imported wildlife shall be subject to inspection by authorized agents of the department and such inspections may include biological examinations and the removal of a reasonable sample of fish or eggs for such purposes.

Any person violating any of the provisions of this section concerning coyotes shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred nor more than three hundred dollars, or confined in jail not less than ten nor more than one hundred days, or be both fined and imprisoned within the limitations aforesaid.

CHAPTER 84

(S. B. 425—By Mr. Colombo)

[Passed March 2, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the killing of deer and other wildlife that are causing damages to crops, fruit trees or nurseries; procedure for issuance of permits or other authorization.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-15. Permit to kill deer or other wildlife causing damage to cultivated crops, fruit trees or commercial nurseries.

(a) Whenever it shall be found that deer or other wildlife are causing damage to cultivated crops, fruit trees or commercial nurseries, the owner or lessee of the lands on which such damage is done may report such finding to the conservation officer or biologist of the county in which such lands are located or to the director. The director shall then
investigate the reported damage and if found substantial shall
issue a permit to the owner or lessee to kill one or more deer
or other wildlife in the manner prescribed by the director.
(b) In addition to the foregoing, the director shall establish
procedures for the issuance of permits or other authorization
necessary to control deer or other wildlife causing property
damage.

CHAPTER 85
(H. B. 1406—By Mr. Shiflet and Mr. Ballouz)

[Passed March 8, 1982; in effect January 1, 1983. Approved by
the Governor.]

AN ACT to amend and reenact sections forty-three and forty-
six, article two, chapter twenty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating
to nonresident hunting and fishing licenses; fees for hunting
bears.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for non-
residents.

§20-2-46. Class L nonresident statewide bow and arrow hunting and fishing
license; Class LL nonresident state-wide bow and arrow bear
hunting license.

§20-2-43. Class E, Class EE, Class F, Class G and Class H licenses
for nonresidents.

A Class E license shall be a nonresident hunting license
and shall entitle the licensee to hunt all game in all counties
of the state, except when other licenses or permits are re-
quired. It shall be issued only to citizens of the United States
and to unnaturalized persons who possess the permit referred
A Class EE license shall be a nonresident bear hunting license and shall entitle the licensee to hunt bear in all counties of the state on and after the first day of July, one thousand nine hundred eighty-two. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be one hundred dollars.

A Class F license shall be a nonresident fishing license and shall entitle the licensee to fish for all fish, except trout, in all counties of the state. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be twenty dollars.

Trout fishing is not permitted with a Class F license unless such license has affixed thereto an appropriate trout stamp as prescribed by the department of natural resources.

A Class G license shall be a family fishing license and shall entitle the licensee and members of his family to fish within the territorial limits of state parks and state forests and in the waters of streams bounding same, for a distance of not to exceed one hundred yards from the exterior boundary of any state park or state forest, for a period not to exceed one week. It may be issued to any adult resident or nonresident who is temporarily residing in any state park or forest as tenant or lessee of the state. The fee therefor shall be six dollars for the head of the family, plus one dollar additional for each member of his family to whom the privileges of such license are extended. Class G licenses may be issued in such manner and under such regulations as the director may see fit to prescribe.

Trout fishing is not permitted with a Class G license unless such license has affixed thereto an appropriate trout stamp as prescribed by the department of natural resources.
The trout stamp must be affixed to the license of the head of the family only.

A Class H license shall be a nonresident small game hunting license and shall entitle the licensee to hunt small game in all counties of the state for a period of six days beginning with the date it is issued. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be ten dollars. As used in this section, “small game” means all game except bear, deer, wild turkey and wild boar.

§20-2-46. Class L nonresident statewide bow and arrow hunting and fishing license; Class LL nonresident state-wide bow and arrow bear hunting license.

A Class L license shall be a nonresident bow and arrow hunting and fishing license and shall entitle the licensee to employ a long bow and arrow in taking game, fish and frogs in all counties of the state. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be fifteen dollars.

A Class LL license shall be a nonresident bow and arrow bear hunting license and shall entitle the licensee to employ a long bow in hunting bear in all counties of the state. It shall be issued only to citizens of the United States who are nonresidents of this state. The fee therefor shall be one hundred dollars.

CHAPTER 86
(Com. Sub. for S. B. 352—By Mr. Colombo)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to not allowing holders of only Class O resident and nonresident
trout fishing license to hold a Class N special deer hunting license; and relating to Class N license season.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46b. Class N special deer hunting license.

A Class N license is a special deer hunting license for antlerless deer of either sex and entitles the licensee to hunt for and kill one antlerless deer of either sex during the Class N license season: Provided, That if a hunter kills a buck deer during the regular deer hunting season, he shall also be permitted to hunt for and kill one antlerless deer during Class N license season if he has applied for and has had issued to him a Class N license. Only one Class N license may be acquired during any calendar year in which the Class N license season is held, and the Class N license can be used only by the applicant. No person receiving a Class N license for any given Class N license season may receive a Class N license for the next consecutive Class N license season. In order to implement this restriction the director shall cause the names and social security numbers of those persons receiving licenses to be recorded in the department's records. The fee for a Class N license is eight dollars: Provided, however. That the director may issue a Class N license to a person who received a Class N license the preceding year if there are not sufficient applications received from persons who did not receive a Class N license the preceding year to meet the purpose for which Class N licenses are issued.

The Class N license may be issued only for the purpose of removing antlerless deer on a post-season basis when the director deems it essential for proper management of wildlife resources. The director shall establish such rules and regulations governing the issuance of such Class N
licenses as he deems necessary to limit, on a fair and equitable basis, the number of persons who may hunt for antlerless deer in any county, or any part of a county: Provided, That no more than four Class N licenses shall be issued for each deer that the director desires to have killed during the Class N season.

When the director deems it essential that Class N license season be held in a particular county or part of a county, that season shall be set by the natural resources commission as provided for in section seventeen, article one of this chapter.

Bona fide resident landowners or their resident children, bona fide resident tenants of such land, and any bona fide resident stockholder of resident corporations which are formed for the primary purpose of hunting or fishing and which are the fee simple owners of no less than one thousand acres of land upon which such antlerless deer may be hunted are not required to have a Class N license in their possession while hunting antlerless deer on their own land during the Class N license season.

A Class N license may be issued only to a resident of this state who holds a valid Class A, Class AB or Class Q license issued for the current calendar year or a resident of West Virginia who is not required to obtain a license or permit to hunt as provided in section twenty-eight, article two of this chapter, except that this requirement shall not apply to persons under the age of fifteen. The director shall require proof of age before issuing a Class N license, and such license shall contain a space for recording the number of the valid Class A, Class AB or Class Q license.

Notwithstanding any provision of this code to the contrary, no Class N license shall be issued for a county or a part of a county unless, during the regular deer hunting season in the previous year, two bucks have been killed per square mile of deer range in that county or part of the county in which the hunt is held, and the director deems the holding of the Class N season necessary.
AN ACT to amend and reenact sections seven and seven-a, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to loans to industrial development agencies for industrial development projects and for industrial subdivision project acquisitions and improvements.

Be it enacted by the Legislature of West Virginia:

That sections seven and seven-a, article fifteen, 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 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-7. Loans to industrial development agencies for industrial development projects.

§31-15-7a. Loans to industrial development agencies for industrial subdivision project acquisitions and improvements.

§31-15-7. Loans to industrial development agencies for industrial development projects.

1 When it has determined upon application of an industrial development agency and upon hearing in the manner hereinafter provided that the establishment or acquisition of a particular industrial development project has accomplished or will accomplish the public purposes of this article, the authority may contract to loan such agency up to one hundred percent of the estimated cost of such project when financed by bonds issued by the authority, or the authority may contract to loan such agency an amount not in excess of fifty percent of the cost or estimated cost of such project, as established, to be established or proposed to be acquired, when the project is not financed by bonds issued by the authority, subject to the following conditions:

(a) The West Virginia economic development authority shall make every reasonable effort to ensure that West Virginia firms and West Virginia workers are used in such projects.
(b) Industrial development projects to be established or acquired.

1. The authority shall have first determined that the industrial development agency holds funds in an amount equal to or property of a value equal to not less than ten percent of the estimated cost of establishing or acquiring the industrial development project, which funds or property are available for and shall be applied to the establishment or acquisition of the project.

2. The authority shall have also determined that the industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies, a firm commitment for all other funds over and above the loan of the authority and such funds or property as the agency may hold, necessary for payment of all the estimated cost of establishing or acquiring the industrial development project and that the sum of all these funds is adequate to ensure completion and operation of the industrial development project.

(c) Industrial development projects established or acquired with initial authority loan participation.

1. The authority shall have first determined that the industrial development agency has expended funds in an amount equal to, or has applied property of a value equal to, not less than ten percent of the cost of establishing or acquiring the industrial development project.

2. The authority shall have also determined that the industrial development agency obtained from other independent and responsible sources, such as banks and insurance companies, other funds necessary for payment of all the cost of establishing or acquiring the industrial development project and that the industrial development agency participation and these funds have been adequate to ensure completion and operation or acquisition of the industrial development project. The proceeds of any loan made by the authority to the industrial development agency pursuant to this subdivision (c) shall be used only for the establishment or acquisition of industrial development projects in furtherance of the public purposes of this article. The loan of the authority shall be for such period of time and shall bear interest at such rate as the authority determines and it shall be secured by the negotiable promissory note of the industrial development agency and by
deed of trust on the industrial development project for which
the loan was made or by assignment of any deed of trust and
negotiable promissory note and other security taken by the
industrial development agency on the industrial
development project, such deed of trust and note, assignment
of deed of trust, and note and other security to be second and
subordinate only to the deed of trust securing the first lien
obligation issued to secure the commitment of funds from the
independent and responsible sources and used in the
financing of the industrial development project.

Money loaned by the authority to an industrial
development agency shall be withdrawn from the fund and
paid over to the agency in such manner as is provided by
rules and regulations of the authority.

The authority shall deposit all payments of interest on loans
and the principal thereof in the fund. When any federal
agency participates, the authority may adjust the required
ratios of financial participation by the industrial development
agency, the source of independent funds and the authority in
such manner as to ensure the maximum benefit available to
the industrial development agency, the authority, or both, by
the participation of the federal agency. When ratios are
adjusted as aforesaid, no such adjustment shall be made
which shall cause the authority to grant a loan to the
industrial development agency in excess of fifty percent of
the cost or estimated cost of the industrial development
project.

Where any federal agency participating in the financing of
an industrial development project is not permitted to take as
security for such participation a deed of trust or assignment
of deed of trust and other security the lien of which is junior
to the deed of trust or assignment of deed of trust and other
security of the authority, the authority may take as security
for its loan to the industrial development agency a deed of
trust or assignment of deed of trust and other security junior
in lien to that of the federal agency.

§31-15-7a. Loans to industrial development agencies for in-
dustrial subdivision project acquisitions and im-
provements.

When it has been determined upon application of an
industrial development agency and upon hearing in the
manner hereinafter provided that the acquisition or
improvement of a particular industrial subdivision project by such agency will accomplish the public purposes of this article, the authority may contract to loan such industrial development agency up to one hundred percent of the estimated cost of such project when financed by bonds issued by the authority or, when the project is not financed by bonds issued by the authority, the authority may contract to loan such industrial development agency an amount not in excess of fifty percent of the cost or estimated cost of such industrial subdivision project acquisition or improvement, except as to shell buildings, in which case the agency may contract to loan an amount not in excess of ninety percent of the cost of such shell building, subject to the following conditions:

1. The authority shall have determined that the industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies, a firm commitment for all other funds, over and above the loan of the authority, necessary for payment of all the estimated cost of the industrial subdivision project acquisition or improvement and that the sum of all these funds is adequate to ensure completion of the project acquisition or improvement.

2. The authority shall have also determined that the industrial development agency has or proposes to acquire clear and marketable legal title to the industrial subdivision project to be improved or acquired.

3. The industrial development agency shall covenant in writing with the authority that, as long as any loan made by the authority to the agency for the acquisition or improvement of any industrial subdivision project remains unpaid, no portion of such industrial subdivision project shall be sold, leased or otherwise encumbered except for the purpose of establishing an industrial development project on such land by the agency.

4. In the case of a contract to loan more than fifty percent of the cost of a shell building, subject to the maximum limitation of ninety percent as aforesaid, the industrial development agency shall furnish to the authority evidence that such industrial development agency has entered into a contract whereby a responsible buyer or responsible tenant is legally obligated to acquire or lease such shell building. The Legislature finds and declares that it does not believe it would be in the best interest of the state for the authority to
contract to loan more than fifty percent of the cost of a shell
building, subject to the maximum limitation of ninety
percent as aforesaid, unless it is clear that the use to be made
of such shell building will result in the employment of a
reasonably substantial work force.

The loan of the authority shall be for such period of time
and shall bear interest at such rate as the authority
determines and it shall be secured by the negotiable
promissory note of the industrial development agency and by
deed of trust on the industrial subdivision project for which
the loan was made, such deed of trust to be second and
subordinate only to the deed of trust securing the first lien
obligation issued to secure the commitment of funds from the
independent and responsible sources and used in the
financing of the industrial subdivision project acquisition or
improvement.

The authority may, in its discretion, defer the payment of
principal and interest, or principal only, or interest only, upon
any loan made to an industrial development agency for any
industrial subdivision project acquisition or improvement,
such deferment to be for such period as the authority
determines, not to exceed five years from the date of the deed
of trust securing the loan. If any portion of such industrial
subdivision project is sold or leased by the agency prior to the
expiration of the five-year period, all deferred installments of
the principal of the loan accrued on the date of such sale or
lease, or the proportionate part of such deferred principal
which the sold or leased portion of the project bears to its
total acreage, together with all unpaid interest accrued on the
date of such sale or lease, shall, at the option of the authority,
become due and payable immediately or subject to
renegotiation by either increasing or decreasing the number
and amount of each installment of principal and interest,
without effecting any change in the amount of principal of the
original loan or the rate of interest as originally fixed by the
authority in the deed of trust and note.

Money loaned by the authority to an industrial
development agency shall be withdrawn from the fund and
paid over to the agency in such manner as is provided by
rules and regulations of the authority.

The authority shall deposit all payments of interest on any
loans and the principal thereof in the fund.

Where any federal agency participating in the financing of
90 industrial subdivision project acquisition or improvement is
91 not permitted to take as security for such participation a deed
92 of trust or assignment of deed of trust and other security the
93 lien of which is junior to the deed of trust or assignment of
94 deed of trust and other security of the authority, the authority
95 may take as security for its loan to the industrial development
96 agency a deed of trust or assignment of deed of trust and
97 other security junior in lien to that of the federal agency.

CHAPTER 88
(Com. Sub. for S. B. 409—By Mr. McGraw, Mr. President)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen-b, relating to the state mortgage and industrial development investment pool; making legislative findings; establishing the pool; providing that the state board of investments provide funds for the pool from workmen's compensation and other accounts, but not from pension accounts; providing for short-term investment of such funds; providing for the release of such funds if not needed; providing that the housing development authority shall make fifty million dollars of such funds available for mortgages on single-family residential housing of up to eighty-five percent of appraised value; providing that the economic development authority make fifty million dollars of pool funds available for business loans; providing for collateral; providing for reversion to the control of the state board of investments if such funds are not needed; providing for interest rates of between ten and twelve percent for mortgages; providing that private institutions may make mortgage loans; providing for crediting of interest earned to the accounts; and providing for procedural rules.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eighteen-b, to read as follows:
ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.

§31-18B-1. Legislative intent.

§31-18B-2. Establishment of state mortgage and industrial development investment pool; investment of workmen's compensation funds and other funds in such pool; schedule of moneys invested; authority of state board of investments to invest funds from the pool in short-term investments; reversion of control of state board of investments.

§31-18B-3. Housing development fund to make available state mortgage and industrial development investment pool funds for mortgages on single-family residential units; limitations upon type and size of such mortgages.

§31-18B-4. West Virginia economic development authority to make available state mortgage and industrial development investment pool funds for investment in industrial development; amount of funds available; interest rate specified.

§31-18B-5. Reversion to state board of investments of money not used for mortgages.

§31-18B-6. Interest rate charged by housing development fund; other charges; points.

§31-18B-7. Term of mortgage loans; renegotiation after the years; promulgation of legislative rules.

§31-18B-8. Persons eligible for loans from the state mortgage and industrial development investment pool; housing development fund to have sole discretion in determining who is to receive loans; discrimination prohibited.

§31-18B-9. Housing development fund may contract with private institutions to place and service loans; payment of a portion of interest to such institutions.

§31-18B-10. Disposition of interest income and repayments of principal.


§31-18B-1. Legislative intent.

1 The Legislature finds and declares that:
2 (1) The vast majority of West Virginians have pursued a goal of owning a home, a center of family life and family independence deeply cherished and highly valued.
3 (2) In many parts of the state there is a large number of single-family residential units that cannot presently be marketed because of high interest rates and adverse economic conditions.
4 (3) In addition, the state and its inhabitants are suffering high unemployment and low income because of the depressed state of the housing market and because of its inability to attract new business. This situation adversely affects potential home buyers, home builders, skilled craftsmen, realtors and their employees and other citizens.
These conditions also reduce state revenues and frustrate the laudable aspirations of many West Virginians to enjoy the pleasures of home ownership and pursue productive employment.

(4) By the cooperative efforts of our citizens there is a large pool of resources held in trust by the state for the sole benefit of West Virginians, including funds reserved for workers injured in the course of employment.

(5) Some of these funds, particularly the workmen's compensation fund, are invested under the actuarial assumption of a yield less than that of current market investments. Yet the current yield on some of these funds, and particularly the workmen's compensation fund, is lower than the actuarially assumed interest rate, and has been for at least three years.

(6) The common good does not require that all of these funds be invested so as to yield the very highest investment return offered in the market, especially when the current rate of market interest is:

(a) So high that it stifles the legitimate aspirations and attainable dreams of so many West Virginians and West Virginia businesses; and

(b) So high that it encourages the flight of capital accumulated by West Virginians for the benefit of West Virginians to national markets where the only consideration is the highest rate of return.

(7) In these circumstances, prudence does not require that the state board of investments seek the highest rate of return on all investments. Rather, prudence requires that in investing federally tax-free funds the state board of investments should seek a rate of return commensurate with its public charter. Furthermore, prudence demands that the board immediately seek fiscally sound investments within the state of West Virginia which offer sound security and directly serve the hopes and aspirations in housing and employment of the inhabitants of this state.

(8) The survival and renewal of a vibrant market for single family residential units and the opportunity to attract new businesses to the state is a sound and preferred investment for the resources held in trust by this state for its citizens. Such investments deserve precedence and encouragement, even at the expense of foregoing the highest rate of investment return, an investment return which the tax paying
investor might gain in the current market place but which
prudence dictates that the state board of investments need not
pursue.

(9) The success of the undertakings required by this
article will be amply demonstrated by: (a) The increased
financial stability of the state, (b) the contribution which will
occur when the dreams of hundreds of West Virginians are
realized, (c) the intrinsic worth of enhancing the cooperative
spirit of the inhabitants of this state in employment and
housing, and (d) the enhancement of revenue to the state
which will be generated by the commerce West Virginia seeks
to stimulate. In addition, the rate of return realized by these
funds will be at least as high as the actuarial assumptions,
and, given the rates of return demonstrated over the past
three years, probably higher than the current rate of return.

§31-18B-2. Establishment of state mortgage and industrial
development investment pool; investment of
workmen’s compensation funds and other funds
in such pool; schedule of moneys invested;
authority of state board of investments to invest
funds from the pool in short-term investments;
reversion of control of state board of investments.

(a) There is hereby created and established a “state
mortgage and industrial development investment pool” into
which moneys shall be paid as provided in this section. The
state mortgage and industrial development investment pool
shall consist of a portion of the moneys and funds entrusted
to the state board of investments by the commissioner of
workmen’s compensation and other state agencies and
organizations, which funds are invested by the state board of
investments in long-term securities according to the
provisions of this code: Provided, That no moneys or funds
from any pension plan shall be invested in the state mortgage
and industrial development investment pool.

(b) Notwithstanding any of the restrictions of section nine,
article six, chapter twelve, the state board of investments
shall make available from the workmen’s compensation
funds and other such funds which it invests, moneys for the
state mortgage and industrial development investment pool.
Such moneys shall be drawn from workmen’s compensation
funds and other funds except pension funds currently
invested by the state board of investments and shall be made
available for investment on or before the dates established in
subsection (c) of this section: Provided, That should the workmen's compensation fund fall below three hundred million dollars, then no further transfers provided in this section shall be granted until the fund again reaches four hundred million dollars.

(c) The state board of investments shall make available for investment in the state mortgage and industrial development investment pool the funds identified in subsections (a) and (b) of this section according to the following schedule:

(1) On the effective date of this act, twenty-five million dollars of which twenty million dollars is to be deposited in the pool for investment by the housing development fund, and five million dollars is to be deposited in the pool for investment by the economic development authority.

(2) On the first day of October, one thousand nine hundred eighty-two, twenty-five million dollars, of which twenty million dollars is to be deposited in the pool for investment by the housing development fund, and five million is to be deposited in the pool for investment by the economic development authority.

(3) On the first day of January, one thousand nine hundred eighty-three, twenty-five million dollars, of which ten million dollars is to be deposited in the pool for investment by the housing development fund, and fifteen million dollars is to be deposited in the pool for investment by the economic development authority.

(4) On the first day of April, one thousand nine hundred eighty-three, twenty-five million dollars, all of which is to be deposited in the pool for investment by the economic development authority.

Investments by the housing development fund are to be made pursuant to the provisions of section three of this article, and by the economic development authority pursuant to section four of this article.

(d) The state board of investments may, after committing these funds to the state mortgage and industrial development investment pool, invest the moneys of such pool in any short-term investments as may be deemed to be prudent and proper until such funds are invested by the housing development fund or the West Virginia economic development authority. The income from such short-term investments shall accrue to and be credited to the accounts
from which such funds were drawn in proportion to the amount of funds so drawn.

(e) The funds invested in the state mortgage and industrial development pool shall be invested solely for the benefit of the accounts from which the funds are drawn in proportion to the amount so drawn. For purposes of crediting of investment returns to the proper account, the state board of investments is to consider the state mortgage and industrial development investment pool as it would any other long-term investment at a fixed rate of return.

(f) The housing development fund and the West Virginia economic development authority may release the funds from the state mortgage and industrial development investment pool to the control of the state board of investments if it determines that lower interest rates than those now prevailing require that such funds cannot be competitively invested in first mortgages on residential property or industrial development projects located in the state.

§31-18B-3. Housing development fund to make available state mortgage and industrial development investment pool funds for mortgages on single-family residential units; limitations upon type and size of such mortgages.

(a) The housing development fund shall make available at the interest rate specified in section six of this article, one half of the moneys from the state mortgage and industrial development investment pool for investment in mortgages on single-family residential units, twenty-five percent of which shall be designated and restricted, for a period of twelve months, to new and never occupied single-family residential units which shall, if not so used, revert to investments in other nonrestricted mortgages. For the purposes of this article, a single-family residential unit means a detached unit on a separate piece of land used solely for the housing of one family, and only one family, which family owns the dwelling and the land or has a mortgage thereupon, and also includes townhouses or row houses used by a family as a residential dwelling, and owned by the family.

(b) Loans made by the housing development fund from the state mortgage and industrial development investment pool are to be made solely for the purpose of purchasing real estate upon which is situate a single-family unit, or for the
construction of a single-family residential unit upon real
estate by the buyer of such unit to provide housing for only
himself and his family, or for the purpose of the payment of a
loan theretofore made for the construction of a single-family
residential unit, or for the purpose of purchasing real estate
upon which is situate a single-family residential unit and
making additions or improvements thereto: Provided, That
none of these loans shall be used to refinance existing loans,
except construction loans. Each such loan must be secured
by a first mortgage or first deed of trust upon such real
property. Such mortgage or deed of trust shall be held by the
housing development fund or its assignee.

(c) Loans made pursuant to the provisions of this section
may not exceed eighty-five percent of the appraised value of
the real estate and single-family residential unit: Provided,
That if the loan is for the purchase of a single-family residential
unit for the purpose of making additions and improvements
thereto, such loan shall be no more than eighty-five percent of the
appraised value of the property including such improvements
when made, as estimated by an appraiser retained by the fund.

(d) In no event may a loan obtained pursuant to this
section be for an amount greater than seventy-five thousand
dollars.

(e) Mortgage loans made pursuant to the provisions of this
section shall be insured for at least twenty percent of the
amount of the loan by either an agency of the federal
government or a private mortgage insurance company
licensed in the state.

§31-18B-4. West Virginia economic development authority to
make available state mortgage and industrial
development investment pool funds for
investment in industrial development; amount of
funds available; interest rate specified.

(a) The West Virginia economic development authority
may use for any investments authorized by sections seven
and seven-a, article fifteen, chapter thirty-one of this code up
to one half of the funds of the state mortgage and industrial
development investment pool: Provided, That the economic
development authority shall deposit with the treasurer of the
state for the credit of the state mortgage and industrial
development pool such notes, security interests or bonds
issued by the economic development authority evidencing
the indebtedness of the authority to the pool: *Provided*,

*However.* That such notes, security interests or bonds issued
by the authority shall be secured by security equal to or better
than the highest rating of at least two or more nationally
recognized rating services such as Standard and Poor's, Dun
and Bradstreet or Moody's.

(b) The interest rate and the maturity dates of the notes,
security interests or bonds held by the treasurer for the state
mortgage and industrial development investment pool shall be
determined by the economic development authority
according to the provisions of section eleven, article fifteen,
chapter thirty-one of this code: *Provided.* That such interest rate
shall not be less than ten percent per annum.

§31-18B-5. **Reversion to state board of investments of money not
used for mortgages.**

Should the housing development fund or its agents or the
economic development authority fail to loan all or a portion of
the funds made available pursuant to section two of this
article within one year of the date those funds become a part
of the state mortgage and industrial development investment
pool, then that portion of the funds not invested shall revert
to the exclusive control of the state board of investments and
shall no longer be required to be available to the state
mortgage and industrial development investment pool:
*Provided,* That no part of the pool available for the economic
development authority shall revert to the state board of
investments until four years after these funds become part of
the pool.

§31-18B-6. **Interest rate charged by housing development fund;
other charges; points.**

(a) The interest charged for mortgage loans obtained
according to the provisions of section three of this article
shall not exceed the monthly index of long-term United
States government bond yields for the calendar month
preceding the date the commitment for such loan is made:
*Provided,* That in no event shall the interest rate be more than
twelve percent per annum, nor less than ten percent per
annum. For the purposes of this section, the monthly index of
long-term United States government bond yields means the
monthly unweighted average of the daily unweighted average
of the closing bid yield quotations in the over-the-counter
market for all outstanding United States treasury bond issues
which mature twenty years or more from the date the index is calculated, but shall not include such bonds as are redeemable at par for payment of federal estate taxes.

(b) The housing development fund may charge such points to the seller of the real estate covered by the first mortgage deed or deed of trust as are necessary to offset costs of making the loan, including, but not limited to, the costs of processing the loan application and the costs of interest charges incurred between the commitment date of the loan and the date the property is actually purchased: Provided, That such points charged shall not exceed two points and shall be charged to the seller: Provided, however, That the real estate broker shall, from his or her commission, pay an amount equal to one point. The seller shall furnish to the fund satisfactory proof that he or she has not within the two years preceding the contract of the sale offered the house to the buyer for less than the sale price provided in the contract or sale between them. The proceeds from such points paid by the seller and broker to the housing development fund, less actual housing development fund expenses up to one half of one point, and less an amount equal to the first year cost for mortgage insurance required by section three of this article, shall be transmitted to the state board of investments as provided in section ten of this article.

§31-18B-7. Term of mortgage loans; renegotiation after ten years; promulgation of legislative rules.

(a) The term of the loans made pursuant to the provisions of this article shall be not less than twenty nor more than thirty years and shall be assumable by a person financially qualified according to the provisions of section eight of this article.

(b) The housing development fund may include in the first mortgage agreement or deed of trust a provision which allows it to renegotiate the rate of return after ten years. Such provision may be written to allow the housing development fund to increase the interest rate for the remainder of the loan to the then monthly index of long-term United States government bond yields as defined in section six of this article for the calendar month preceding registration, as defined in section six of this article, plus two percent per annum: Provided, That the maximum renegotiated rate may not exceed fourteen percent per annum: Provided, however,
That if the holder of the mortgage presents evidence that his average gross income for the two years prior to the renegotiation is no more than one sixth greater than his income at the time the loan was made, then the loan shall not be renegotiated.

(c) The housing development fund shall propose legislative rules according to the provisions of chapter twenty-nine-a of this code to implement this section.

§31-18B-8. Persons eligible for loans from the state mortgage and industrial development investment pool; housing development fund to have sole discretion in determining who is to receive loans; discrimination prohibited.

(a) Any person is entitled to receive a first mortgage or deed of trust from the state mortgage and industrial development investment pool for real estate situated within the boundaries of the state if the person's family income for each of the two years preceding the commitment year is fifty thousand dollars or less: Provided, That such person must be purchasing the real estate for use as his or her single-family residential unit as defined in section three of this article: Provided, however, That such person is qualified for the loan as provided in this section.

(b) The housing development fund shall have sole discretion in determining who is qualified to receive mortgage loans from the state mortgage and industrial development investment pool, subject to the provisions of section fourteen of this article. The housing development fund shall establish by interpretive rule promulgated pursuant to the provisions of chapter twenty-nine-a guidelines for the exercise of this discretion.

(c) The housing development fund shall issue mortgage loans to such qualified buyers on the basis of the first of such buyers in the order in which the applications are approved.

(d) In view of the uncertain economic conditions prevailing, the fund may propose legislative rules which, if promulgated, suspend all or any of the provisions of this section.

(e) The housing development fund shall not discriminate against buyers on the basis of race, sex, national origin, religion or location in the state in which the buyer resides.
§31-18B-9. Housing development fund may contract with private institutions to place and service loans; payment of a portion of interest to such institutions.

(a) The housing development fund may contract with private mortgage companies, savings and loan associations, or banks to provide for the placement, origination and servicing of the mortgages described in this article: Provided, that such institutions must be licensed to do business in West Virginia and, in the case of a savings and loan, or a bank, must be under the supervision of the department of banking of this state as provided in chapter thirty-one-a of this code or must be a national bank or a federally insured savings and loan. Such institutions shall follow the same restrictions as the housing development fund, and shall act only as the agent for such.

(b) Notwithstanding the maximum interest rate specified in section six of this article, the housing development fund is authorized to increase the interest rate, up to one half of one percent over the rate provided in section six if the loan has been placed and serviced by a mortgage company, savings and loan or bank. Such mortgage company, savings and loan or bank shall receive such extra amount as payment for its services.

(c) If the housing development fund so determines, one of the points provided for in section six of this article may be paid to the private mortgage company, bank or savings and loan to cover the expense of originating the loan.

§31-18B-10. Disposition of interest income and repayments of principal.

(a) The interest received from mortgage payments made pursuant to the provisions of this article shall be transmitted to the state board of investments monthly.

(b) Such interest shall be treated by the state board of investments as an investment return, and shall be credited to the workmen's compensation account or other appropriate accounts in the same manner as interest received on other investments.

(c) The funds from repayment of principal of mortgage loans shall be reinvested by the housing development fund according to the provisions of section five of this article. Funds which have been repaid to the state mortgage and
13 industrial development investment pool and not reinvested
14 in mortgages within one year shall revert to the sole control of
15 the state board of investments and shall no longer be
16 considered part of the state mortgage and industrial
17 development investment pool.

1 The housing development fund may promulgate
2 procedural rules pursuant to chapter twenty-nine-a which
3 describe procedures used to procure a loan pursuant to the
4 provisions of this article and to introduce such forms as may
5 be required.

CHAPTER 89
(Com. Sub. for S. B. 251—By Mr. Heck)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including mine subsidence insurance within the definition of kinds of insurance; and excluding professional bondsmen and certain individuals from the definitions of surety insurance.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, 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 1. DEFINITIONS.

*§33-1-10. Kinds of insurance defined.

1 The following definitions of kinds of insurance are not
2 mutually exclusive and, if reasonably adaptable thereto,
3 a particular coverage may be included under one or more
4 of such definitions:

*Clerk's Note: This section was also amended by Com. Sub. for H. B. 1874, now Chapter 90, Acts, 1982, which was passed March 11, 1982.
(a) Life insurance—Life insurance is insurance on human lives including endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits for disability and annuities.

(b) Accident and sickness—Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or expense resulting from sickness, and insurance relating thereto.

(c) Fire—Fire insurance is insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (12), subdivision (e) of this section.

(d) Marine—Marine insurance is insurance:

(1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land (above or below ground), or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment or reshipment incident thereto, including marine builders' risks and all personal property floater risks;

(2) Against any and all kinds of loss or damage to person or to property in connection with or appertaining to a marine, inland marine, transit or transportation in-
urance, including liability for loss of or damage to either,

arising out of or in connection with the construction,

repair, operation, maintenance or use of the subject mat-
ter of such insurance (but not including life insurance or

surety bonds nor insurance against loss by reason of

bodily injury to the person arising out of the ownership,

maintenance or use of automobiles);

(3) Against any and all kinds of loss or damage to

precious stones, jewels, jewelry, gold, silver and other

precious metals, whether used in business or trade or

otherwise and whether the same be in course of trans-

portation or otherwise;

(4) Against any and all kinds of loss or damage to

bridges, tunnels and other instrumentalities of transpor-
tation and communication (excluding buildings, their

furniture and furnishings, fixed contents and supplies held

in storage) unless fire, windstorm, sprinkler leakage, hail,

explosion, earthquake, riot or civil commotion or any or

all of them are the only hazards to be covered;

(5) Against any and all kinds of loss or damage to

piers, wharves, docks and ships, excluding the risks of

fire, windstorm, sprinkler leakage, hail, explosion, earth-

quake, riot and civil commotion and each of them;

(6) Against any and all kinds of loss or damage to

other aids to navigation and transportation, including dry

docks and marine railways, dams and appurtenant facili-
ties for control of waterways; and

(7) Marine protection and indemnity insurance, which

is insurance against, or against legal liability of the in-
sured for, loss, damage or expense arising out of, or inci-
dent to, the ownership, operation, chartering, mainten-
ance, use, repair or construction of any vessel, craft or

instrumentality in use in ocean or inland waterways,

including liability of the insured for personal injury,

illness or death or for loss of or damage to the property of

another person.

(e) Casualty—Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss
of or damage to any land vehicle or aircraft or any draft
or riding animal or to property while contained therein or
thereon or being loaded therein or therefrom, from any
hazard or cause, and against any loss, liability or expense
resulting from or incident to ownership, maintenance or
use of any such vehicle, aircraft or animal; together with
insurance against accidental death or accidental injury to
individuals, including the named insured, while in, enter-
ing, alighting from, adjusting, repairing or cranking, or
caused by being struck by any vehicle, aircraft or draft
or riding animal, if such insurance is issued as a part of
insurance on the vehicle, aircraft or draft or riding ani-
mal;

(2) Liability insurance, which is insurance against
legal liability for the death, injury or disability of any
human being, or for damage to property; and provisions
for medical, hospital, surgical, disability benefits to in-
jured persons and funeral and death benefits to depend-
ents, beneficiaries or personal representatives of persons
killed, irrespective of legal liability of the insured, when
issued as an incidental coverage with or supplemental to
liability insurance;

(3) Burglary and theft insurance, which is insurance
against loss or damage by burglary, theft, larceny, rob-
bbery, forgery, fraud, vandalism, malicious mischief, con-
fiscation, or wrongful conversion, disposal or concealment,
or from any attempt at any of the foregoing, including
supplemental coverages for medical, hospital, surgical and
funeral benefits sustained by the named insured or other
person as a result of bodily injury during the commission
of a burglary, robbery or theft by another; also insurance
against loss of or damage to moneys, coins, bullion, securi-
ties, notes, drafts, acceptances, or any other valuable pa-
pers and documents, resulting from any cause;

(4) Personal property floater insurance, which is in-
surance upon personal effects against loss or damage from
any cause;

(5) Glass insurance, which is insurance against loss or
damage to glass, including its lettering, ornamentation
and fittings;
(6) Boiler and machinery insurance, which is insurance against any liability and loss or damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;

(7) Leakage and fire extinguishing equipment insurance, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water mains, pipes and containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus;

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured. Credit insurance shall include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means unemployment which has occurred as a result of, but not limited to, individual or mass layoffs, general strikes or lockouts;

(9) Malpractice insurance, which is insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service;

(10) Entertainment insurance, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from
160 interruption, postponement or cancellation thereof due to
death, accidental injury or sickness of performers, par-
ticipants, directors or other principals;

163 (11) Mine subsidence insurance, as provided for in
article thirty of this chapter; and

165 (12) Miscellaneous insurance, which is insurance
against any other kind of loss, damage or liability prop-
erly a subject of insurance and not within any other kind
of insurance as defined in this chapter, if such insurance
is not disapproved by the commissioner as being contrary
to law or public policy.

171 (f) Surety—Surety insurance includes:

172 (1) Fidelity insurance, which is insurance guaranteeing
the fidelity of persons holding positions of public or
private trust;

175 (2) Insurance guaranteeing the performance of con-
tracts, other than insurance policies, and guaranteeing
and executing bonds, undertakings, and contracts of
suretyship: Provided, That surety insurance does not in-
clude the guaranteeing and executing of bonds by pro-
fessional bondsmen in criminal cases, or by individuals
not in the business of becoming a surety for compensa-
tion upon bonds;

183 (3) Insurance indemnifying banks, bankers, brokers,
financial or moneyed corporations or associations against
loss, resulting from any cause, of bills of exchange, notes,
bonds, securities, evidences of debt, deeds, mortgages,
warehouse receipts or other valuable papers, documents,
money, precious metals and articles made therefrom,
jewelry, watches, necklaces, bracelets, gems, precious and
semiprecious stones, including any loss while they are
being transported in armored motor vehicles or by
messenger, but not including any other risks of transpor-
tation or navigation, and also insurance against loss or
damage to such an insured’s premises or to his furnish-
ings, fixtures, equipment, safes and vaults therein, caused
by burglary, robbery, theft, vandalism or malicious mis-
chief, or any attempt to commit such crimes; and
(4) Title insurance, which is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, defective title, invalidity or adverse claim to title.

CHAPTER 90
(Com. Sub. for H. B. 1874—By Mr. Shingleton and Mr. Riffle)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article thirty, all relating to the establishment and maintenance, under the supervision and control of state board of risk and insurance management, of a certain mine subsidence insurance program; requiring insurers in the state to provide certain mine subsidence insurance to their policyholders; providing for the establishment and maintenance of a mine subsidence insurance fund supported by certain insurance premiums and payments and permissive advancement of state moneys; providing findings, purpose and definitions; giving insurers a limited right to refuse to provide said coverage; providing for reinsurance agreements, distribution of premiums, payments of losses, reporting, subrogation and a right of recourse.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Definitions.
30. Mine Subsidence Insurance.
ARTICLE 1. DEFINITIONS.

§33-1-10. Kinds of insurance defined.

The following definitions of kinds of insurance are not mutually exclusive and, if reasonably adaptable thereto, a particular coverage may be included under one or more of such definitions:

(a) Life Insurance—Life insurance is insurance on human lives including endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits for disability, and annuities;

(b) Accident and Sickness—Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or expense resulting from sickness, and insurance relating thereto;

(c) Fire—Fire insurance is insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (12), subdivision (e) of this section.

(d) Marine—Marine insurance is insurance:

(1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land (above or below ground), or in the air, or while being assembled, packed, crated, baled,

*Clerk's Note: This section was also amended by Com. Sub. for S. B. 251, now Chapter 89, Acts, 1982, which was passed March 12, 1982.
compressed or similarly prepared for shipment or while
awaiting the same or during any delays, storage, transshipment,
or reshipment incident thereto, including marine builders' risks and all personal property floater risks;

(2) Against any and all kinds of loss or damage to person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(3) Against any and all kinds of loss or damage to precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise;

(4) Against any and all kinds of loss or damage to bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion or any or all of them are the only hazards to be covered;

(5) Against any and all kinds of loss or damage to piers, wharves, docks and ships, excluding the risks of fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion and each of them;

(6) Against any and all kinds of loss or damage to other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for control of waterways; and

(7) Marine protection and indemnity insurance, which is insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, re-
pair or construction of any vessel, craft or instrumentality
in use in ocean or inland waterways, including liability of
the insured for personal injury, illness or death or for loss
of or damage to the property of another person.

(e) Casualty—Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss
of or damage to any land vehicle or aircraft or any draft or
riding animal or to property while contained therein or
thereon or being loaded therein or therefrom, from any
hazard or cause, and against any loss, liability or expense
resulting from or incident to ownership, maintenance or use
of any such vehicle, aircraft or animal; together with insur-
ance against accidental death or accidental injury to in-
dividuals, including the named insured, while in, entering,
alighting from, adjusting, repairing or cranking, or caused
by being struck by any vehicle, aircraft or draft or riding
animal, if such insurance is issued as a part of insurance on
the vehicle, aircraft or draft or riding animal;

(2) Liability insurance, which is insurance against legal
liability for the death, injury or disability of any human
being, or for damage to property; and provisions for medical,
hospital, surgical, disability benefits to injured persons and
funeral and death benefits to dependents, beneficiaries or
personal representatives of persons killed, irrespective of legal
liability of the insured, when issued as an incidental coverage
with or supplemental to liability insurance;

(3) Burglary and theft insurance, which is insurance
against loss or damage by burglary, theft, larceny, robbery,
forgery, fraud, vandalism, malicious mischief, confiscation,
or wrongful conversion, disposal or concealment, or from
any attempt at any of the foregoing, including supplemental
coverages for medical, hospital, surgical and funeral bene-
fits sustained by the named insured or other person as a
result of bodily injury during the commission of a burglary,
robbery or theft by another; also insurance against loss of
or damage to moneys, coins, bullion, securities, notes, drafts,
acceptances, or any other valuable papers and documents,
resulting from any cause;
(4) Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause;

(5) Glass insurance, which is insurance against loss or damage to glass, including its lettering, ornamentation and fittings;

(6) Boiler and machinery insurance, which is insurance against any liability and loss or damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;

(7) Leakage and fire extinguishing equipment insurance, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water mains, pipes and containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus;

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured. Credit insurance shall include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means unemployment which has occurred as a result of, but not limited to, individual or mass layoffs, general strikes or lockouts;

(9) Malpractice insurance, which is insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as
the result of negligence in rendering expert, fiduciary or professional service;

(10) Entertainment insurance, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors or other principals;

(11) Mine subsidence insurance, as provided for in article thirty of this chapter; and

(12) Miscellaneous insurance, which is insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(f) Surety—Surety insurance includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings and contracts of suretyship: Provided, That surety insurance does not include the guaranteeing and executing of bonds by professional bondsmen in criminal cases, or by individuals not in the business of becoming a surety for compensation upon bonds;

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while they are being transported in armored motor vehicles or by messenger, but not including any other
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182 risks of transportation or navigation, and also insurance
183 against loss or damage to such an insured's premises or to
184 his furnishings, fixtures, equipment, safes and vaults therein,
185 caused by burglary, robbery, theft, vandalism or malicious
186 mischief, or any attempt to commit such crimes; and
187 (4) Title insurance, which is insurance of owners of
188 property or others having an interest therein, or liens or en-
189 cumbrances thereon, against loss by encumbrance, defective
190 title, invalidity or adverse claim to title.

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§33-30-1. Legislative findings.
§33-30-2. Purpose.
§33-30-3. Definitions.
§33-30-4. Mine subsidence insurance fund.
§33-30-5. State support for mine subsidence insurance fund.
§33-30-6. Mine subsidence coverage; exemption from waivers in writing.
§33-30-7. Limited right of insurers to refuse to provide subsidence coverage.
§33-30-10. Payment of losses.
§33-30-12. Right of recourse.

§33-30-1. Legislative findings.

1 Mine subsidence in this state has resulted in great loss of
2 home, shelter and property to the citizens of this state to
3 the detriment of the health, safety and welfare of such citizens
4 and programs for the alleviation of such problems constitute
5 the carrying out a public purpose. The Legislature hereby
6 declares that the loss of home, shelter and property constitute
7 a detriment to the safety, health and welfare and constitute
8 a public purpose for which this article is in response and is
9 an attempt to alleviate the public detriment.

§33-30-2. Purpose.

1 The purpose of this article is to make mine subsidence in-
2 surance available in a reasonable and equitable manner to
3 all residents of this state through the office of the state board
4 of risk and insurance management.
§33-30-3. Definitions.

As used in this article:

1. “Board” means the state board of risk and insurance management;

2. “Mine subsidence” means loss to a structure caused by lateral or vertical movement, including collapse which results therefrom, of structures from collapse of man-made underground coal mines. It does not include loss caused by earthquake, landslide, volcanic eruption or collapse of storm and sewer drains and rapid transit tunnels;

3. “Mine subsidence insurance fund” or “fund” means the fund established by this article within the office of the state board of risk and insurance management;

4. “Policy” means a contract of insurance providing mine subsidence insurance;

5. “Premium” means the gross rate charged policyholders for insurance provided by this article; and

6. “Structure” means any dwelling, building or fixture permanently affixed to realty, but does not include land, trees, plants, crops or industrial and commercial buildings.

§33-30-4. Mine subsidence insurance fund.

(a) There is hereby established within the office of the state board of risk and insurance management a fund to be known as the “mine subsidence insurance fund.” The board shall operate the fund pursuant to this article.

(b) The fund shall make available insurance coverage against losses arising out of or due to mine subsidence within this state as to any structure within this state.

(c) The moneys in the fund shall be derived from premiums for subsidence insurance collected on behalf of the board pursuant to this article.

(d) Premiums for subsidence insurance shall be established by the board, who shall periodically review the premium level and the experience data applicable to operation of the fund and make changes as required.
(e) Premiums shall be established at a rate or within a schedule of rates sufficient to satisfy all foreseeable claims upon the fund during the period of coverage, giving due consideration to relevant loss or claim experience or trends, to cover normal costs of operation of the fund by the board and provide a reasonable reserve fund for unexpected contingencies. Deviation from the premium set by the board shall not be allowed.

§33-30-5. State support for mine subsidence insurance fund.

(a) The Legislature may appropriate to the mine subsidence insurance fund or the governor may grant to the fund out of the governor's civil contingency fund an amount not to exceed five hundred thousand dollars to pay claims against the fund occurring prior to the accumulation of sufficient reserve to pay such claims and to provide a reasonable reserve fund for unexpected contingencies. The board shall determine adequacy and reasonableness of the reserve.

(b) In the absence of appropriations from the Legislature or grants from the governor's civil contingency fund, the board may advance from its insurance fund sufficient amounts to pay claims against the mine subsidence fund. Any funds advanced by the board shall be repaid to the insurance fund.

§33-30-6. Mine subsidence coverage; exemption from waivers in writing.

(a) Beginning the first day of October, one thousand nine hundred eighty-two, every insurance policy issued or renewed insuring on a direct basis a structure located in this state shall include, at a separately stated premium, insurance for loss occurring on or after October first, one thousand nine hundred eighty-two, caused by mine subsidence unless waived in writing by the insured. The premium charged for coverage shall be the same as the premium level set by the board. The loss covered shall be the loss in excess of two percent of the policy's total insured value, but at no time shall the deductible be less than two hundred fifty dollars nor more than five hundred dollars; and total insured value reinsured by the commissioner shall not exceed fifty thousand dollars.

(b) The board may designate by regulation or rule certain
counties in this state where the insured therein may waive
mine subsidence insurance coverage by means other than the
writing required by subsection (a) of this section.

§33-30-7. Limited right of insurers to refuse to provide subsidence
coverage.

An insurer may refuse to provide subsidence coverage (1)
on a structure evidencing unrepaired subsidence damage,
until necessary repairs are made; or (2) where the insurer
has declined, nonrenewed or canceled all coverage under
a policy for underwriting reasons unrelated to mine subsidence.

Any dispute arising under this section shall be subject to
the hearing and appeal provisions of article two of this chapter.


All companies authorized to write fire insurance in this
state shall enter into a reinsurance agreement with the board
in which each insurer agrees to cede to the board one hundred
percent, up to fifty thousand dollars, of any subsidence in-
surance coverage issued and, in consideration of the ceding
commission retained by the insurer, agree to undertake ad-
justment of losses, and payment of taxes, and to absorb all
other expenses of the insurer necessary for sale of policies and
administration of the mine subsidence insurance program.
The board shall agree to reimburse insurer from the fund for
all amounts paid policyholders for claims resulting from
subsidence and shall pay from the fund all costs of administra-
tion incurred by the board but an insurer is not required
to pay any claim for any loss insured under this article except
to the extent that the amount available in the mine subsidence
insurance fund, as maintained pursuant to sections four and
five of this article, is sufficient to reimburse the insurer for such
claim under this section, and without moral obligation.


The proportion of total subsidence insurance premiums col-
lected by each insurer which shall be retained by the insurer
as a ceding commission shall be fixed by the board. The re-
mainder of such premiums shall be remitted by the insurer to
§33-30-10. Payment of losses.

(a) Pursuant to the reinsurance agreements, authorized by this article, the board shall, within ninety days after receiving the loss report required by section eleven of this article pay the insurer all amounts due out of the fund.

(b) No claim of an insured shall be paid by an insurer in respect of a loss covered by mine subsidence insurance prior to February fifteenth, one thousand nine hundred eighty-three. On and after February fifteenth, one thousand nine hundred eighty-three, all claims of insureds shall be paid within one hundred twenty days after proof of loss is presented to an insurer unless otherwise agreed by the insurer and claimant.


Every insurer must report at times designated by the board the amounts of premiums collected and shall report semiannually on dates established by the board an itemized list of all losses paid, including the policy number and location of structures insured pursuant to this article and reinsured by the commissioner.

§33-30-12. Right of recourse.

Except in the case of fraud by an insurer, the board does not have any right of recourse against the insurer and the insurer may settle losses in the customary manner.

The board may require an insurer to attempt recovery from a policyholder for the amounts paid to such policyholder if, in the judgment of the board, the policyholder was not entitled to the amounts paid because of fraud or violation of the policy conditions. The costs of such recovery attempt shall be borne equally by the insurer and the board.

Any dispute under this section shall be subject to the hearing and appeal provisions of article two of this chapter.

1 Each insurer issuing mine subsidence insurance policies in this state has the right of subrogation.

2 The board may exercise the right of subrogation.

3 Every insurer shall include in its semiannual reports an itemized list of all losses in subrogation and shall remit to the board all moneys, less expenses, recovered as the result of subrogation actions.


1 The board has the power, duty and responsibility to establish and maintain the fund and supervise in all respects, consistent with the provisions of this article, the operation and management of the mine subsidence insurance program established in this article and to do all things necessary or convenient to accomplish the purpose of this article.


1 The board is authorized to promulgate and adopt such rules and regulations relating to mine subsidence insurance as are necessary to effectuate the provisions of this article. Such rules and regulations shall be promulgated and adopted pursuant to the provisions of chapter twenty-nine-a of this code.

CHAPTER 91

(H. B. 1616—By Mr. Martin, 35th Dist., and Mr. Farley)

(Passed March 13, 1982: in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section two, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications of applicants for insurance agents, brokers or solicitors licenses; use of a testing service.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the commissioner shall not issue, renew or permit to exist any agent's, broker's or solicitor's license except to an individual who:

5 (a) Is eighteen years of age or more.

(b) Is a resident of West Virginia, except that a broker's license shall be issued only to nonresidents, and except for nonresident life and accident and sickness agents as provided in section eight of this article.

(c) Is, in the case of an agent applicant, appointed as agent by a licensed insurer for the kind or kinds of insurance for which application is made, subject to issuance of license, or, in the case of a solicitor applicant, appointed as solicitor by a licensed resident agent, subject to issuance of license.

(d) Does not intend to use the license principally for the purpose, in the case of life or accident and sickness insurance, of procuring insurance on himself, members of his family or his relatives; or, as to insurance other than life and accident and sickness, upon his property or insurable interests of those of his family or his relatives or those of his employer, employees or firm, or corporation in which he owns a substantial interest; or of the employees of such firm or corporation, or on property or insurable interests for which the applicant or any such relative, employer, firm or corporation is the trustee, bailee or receiver. For the purposes of this provision, a vendor's or lender's interest in property sold or being sold under contract or which is the security for any loan, shall not be deemed to constitute property or an insurable interest of such vendor or lender.

(e) Satisfies the commissioner that he is trustworthy and
The commissioner may, at his discretion, test the competency of an applicant for a license under this section by examination. If such examination is required by the commissioner, each examinee shall pay a five-dollar examination fee for each examination to the commissioner who shall deposit said examination fee into the state treasury for the benefit of the state fund, general revenue. The commissioner may, at his discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the commissioner, and examination fees charged by such service shall be paid by the applicant.

CHAPTER 92

(Com. Sub. for H. B. 1793—By Mr. Schifano and Mr. Givens)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, seven and eleven, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve, all relating to hospital service corporations, medical service corporations, dental service corporations; authority to create health service corporations by merger or consolidation; deletion of certain required contract provisions; and authority to create certain subsidiary corporations.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, seven and eleven, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve, all to read as follows:
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-1. Declaration of policy.


§33-24-3. Corporations affected by article; eligibility of hospitals, physicians, dentists, chiropodists-podiatrists and chiropractors.

§33-24-7. Required provisions in contracts made by corporations with hospitals, physicians, dentists and other health agencies.

§33-24-11. Reciprocity with other service plans; payment authorized.

§33-24-12. Creation of subsidiary corporation or corporations.

§33-24-1. Declaration of policy.

In view of the desirability of making available to the people of this state increased hospital, medical, dental services and other health services, the declared policy of the Legislature in the enactment of this article is to encourage the organization, promotion and expansion of hospital service corporations, medical service corporations, dental service corporations and health service corporations by exempting them from the payment of all taxes and from the operation of the general insurance laws of this state, but at the same time subjecting them to such regulation as may be necessary for the adequate protection of those members of the public who subscribe for the services offered by such corporation.


For the purpose of this article:

(a) "Corporation" means either a hospital service corporation, a medical service corporation, a dental service corporation or a health service corporation.

(b) "Hospital service corporation" means a nonprofit, nonstock corporation, organized in accordance with the provisions of article one, chapter thirty-one of this code, for the sole purpose of contracting with the public and with hospitals and other health agencies for hospital or other health services to be furnished to subscribers under terms of their contract with the corporation, and controlled by a board of directors, not more than twenty percent of whom, or whose spouse, parent, child, brother or sister by blood or marriage, are engaged in
the providing of health care and at least eighty percent of
whom shall be chosen as representatives of the interests of
consumers, elderly persons, organized labor and business sub-
scribers.

(c) "Hospital service" means only such hospital or other
health care, to be provided by hospitals or other health agen-
cies, or such payment therefor, as may be specified in the
contract made by the subscriber with the corporation.

(d) "Medical service corporation" means a nonprofit, non-
stock corporation, organized in accordance with the the pro-
visions of article one, chapter thirty-one of this code, for the
sole purpose of contracting with the public and with duly
licensed physicians, duly licensed dentists and duly licensed
podiatrists for medical or surgical services and with duly
licensed chiropractors and other health agencies for other health
services to be furnished to subscribers under terms of their
contract with the corporation, and controlled by a board of
directors, not more than twenty percent of whom, or whose
spouse, parent, child, brother or sister by blood or marriage,
are engaged in the providing of health care and at least eighty
percent of whom shall be chosen as representatives of the in-
terests of consumers, elderly persons, organized labor and
business subscribers.

(e) "Medical service" means only such medical, surgical, or
other health care, to be provided by duly licensed physicians,
duly licensed dentists, duly licensed podiatrists or other health
agencies and only such health care, to be provided by duly
licensed chiropractors, or such payment therefor, as may be
specified in the contract made by the subscriber with the
corporation.

(f) "Dental service corporation" means a nonprofit, non-
stock corporation, organized in accordance with the provisions
of article one, chapter thirty-one of this code, for the sole
purpose of contracting with the public and with duly licensed
dentists for dental services to be furnished to subscribers under
terms of their contracts with the corporations, and controlled
by a board of directors, not more than twenty percent of whom
or whose spouse, parent, child, brother or sister by blood or
marriage, are engaged in the providing of health care and at
least eighty percent of whom shall be chosen as representatives
of the interests of consumers, elderly persons, organized labor
and business subscribers.

(g) "Dental service" means only such dental care, to be
provided by duly licensed dentists, duly licensed physicians, or
such payment therefor, as may be specified in the contract
made by the subscriber with the corporation.

(h) "Health service corporation" means a nonprofit, non-
stock corporation, organized in accordance with the provisions
of article one, chapter thirty-one of this code, for the purpose
of contracting with the public and with hospitals and other
health agencies for hospital or other health services to be fur-
nished to subscribers or for the purpose of contracting with
the public and with duly licensed physicians, duly licensed
dentists and duly licensed chiropodists-podiatrists for medical
or surgical services and with duly licensed chiropractors and
other health agencies for other health services or for the pur-
pose of contracting with the public and with duly licensed den-
tists for dental services to be furnished to subscribers, all under
terms of their contract or contracts with the corporation, and
controlled by a board of directors, not more than twenty per-
cent of whom, or whose spouse, parent, child, brother or sister
by blood or marriage, are engaged in the providing of health
care and at least eighty percent of whom shall be chosen as
representatives of the interests of consumers, elderly persons,
organized labor and business subscribers. A hospital service
corporation, or hospital service corporations, a medical service
corporation, or medical service corporations, or a dental service
corporation, or dental service corporations, licensed in accor-
dance with the provisions of this article shall be authorized and
permitted to merge into or consolidate with other such cor-
porations in accordance with the merger or consolidation pro-
visions of sections one hundred fifty and one hundred fifty-
one, article one, chapter thirty-one of the code, to form a
health service corporation: Provided, That no such merger or
consolidation shall be effectuated unless in advance thereof
the plan, agreement and other supporting documents have been
filed with and approved in writing by the commissioner. The
commissioner shall give such approval within a reasonable time after such filing unless he finds such plan or agreement:

(1) Is contrary to law; or

(2) Hazardous to the interests of the subscribers of any corporations involved; or

(3) Would substantially reduce the security of and service to be rendered to the subscribers of any corporation involved.

If the commissioner does not approve any such plan or agreement he shall so notify the corporation or corporations in writing specifying his reasons therefor.

(i) "Health service" means such hospital, medical, surgical, dental care or other health care to be provided by hospitals or other health agencies, duly licensed physicians, duly licensed dentists, duly licensed podiatrists or other health care, to be provided by duly licensed chiropractors, as the case may be, or such payment therefor, as may be specified in the contract made by the subscriber with the corporation.

(j) "Service" means such hospital, medical, dental and other health service as shall be provided under the terms of the contracts issued by the corporation to subscribers.

(k) "Commissioner" means the insurance commissioner of West Virginia.

§33-24-3. Corporations affected by article; eligibility of hospitals, physicians, dentists, chiropodists-podiatrists and chiropractors.

(a) Every such corporation operating within this state shall be subject to the provisions of this article.

(b) Every hospital or other health agency in this state meeting the standards prescribed by the board of directors of each such corporation shall be eligible for participation in any hospital service plan, or health service plan, operating in this state. Every duly licensed physician, duly licensed dentist, duly licensed chiroprist-podiatrist, duly licensed chiropractor or other health agency in this state meeting the standards prescribed by the board of directors of each such corporation shall
be eligible for participation in any medical service plan, or health service plan, operating in this state. Every duly licensed dentist or duly licensed physician in this state meeting the standards prescribed by the board of directors of each such corporation shall be eligible for participation in any dental service plan, or health service plan, operating in this state. The board of directors of every such corporation may also prescribe standards for hospitals, physicians, dentists, chiropodists-podiatrists, chiropractors and other health agencies located in states adjoining this state, and all such hospitals, physicians, dentists, chiropodists-podiatrists, chiropractors and other health agencies meeting such standards shall be eligible for participation in such plans.

§33-24-7. Required provisions in contracts made by corporations with hospitals, physicians, dentists and other health agencies.

Each contract made by the corporation with participating hospitals, physicians, dentists and other health agencies shall contain the following provisions:

(a) That the hospital, physician, dentist or other health agency will render to any subscriber such service as he may be entitled to under the terms and conditions of the contract issued to the subscriber by the corporation.

(b) That in submitting bills to the corporation for services rendered to subscribers under the terms of their contracts, the hospitals, physicians, dentists and other health agencies will make only such charges as are set forth in an agreed schedule of fees to be paid by the corporation.

§33-24-11. Reciprocity with other service plans; payment authorized.

Hospital, medical, dental and health service corporations licensed and operating under provisions of this article are hereby authorized to promote and encourage reciprocity with other licensed hospitals, medical, dental and health plans, both within and without the state, in expanding their services to subscribers. In the event that a subscriber to a plan requires emergency hospital, medical, dental or health service, or, in
the event that the particular services that he receives are not available through the plan to which he subscribes, such plan is hereby authorized to make payment on behalf of such subscriber for such service on a basis not to exceed its schedule of fees to be paid hospitals, physicians or dentists previously approved by the commissioner and on file in his office.

§33-24-12. Creation of subsidiary corporation or corporations.

In addition to the other rights given a corporation under the provisions of this article, a health service corporation may, subject to prior approval of the commissioner, create a subsidiary corporation or corporations, either nonprofit corporation or a corporation organized for pecuniary profit, for any lawful business purpose which is related to and promotes the purposes for which hospital, medical, dental and health service corporations are organized: Provided, That no subsidiary corporation created pursuant to the provisions of this section shall be entitled to the exemptions established by the provisions of this article and all such subsidiary corporations shall be governed by and subject to all other applicable provisions of this code: Provided, however, That no such subsidiary corporation shall be entitled to the exemptions provided under section seven of this article.

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CHAPTER 93

(S. B. 656—By Mr. Shaw and Mr. Jones)

[Pas sed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to public bonded indebtedness; removing interest ceilings on moneys obtained from farmers home administration, housing and urban development and the economic development authority.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-la. Exemption from interest rate ceilings.

1 Notwithstanding any other provision in this code to the contrary, any municipality, county or state agency shall be free of interest rate restrictions when obtaining loans from the farmers home administration, housing and urban development and the economic development authority where such loans are made from federal moneys and are made for public projects. It is the intention of the Legislature that the political subdivisions of this state take maximum possible advantage of federal programs and financing alternatives where such would be in the best interests of this state.

CHAPTER 94

(Com. Sub. for H. B. 1881—By Mr. Harman, 33rd Dist., and Mrs. Goldsmith)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of interpreters for hearing impaired persons generally; establishing the right of a hearing impaired person to have a qualified interpreter assist him in court proceedings; extending such right to administrative hearings and other proceedings; establishing a program to facilitate the use of interpreters in court; providing for a registry of qualified interpreters upon certification by the director of the administrative office of the supreme court of appeals; requiring circuit courts to maintain on file a list of certified interpreters; setting forth the procedure
for utilizing the services of a certified interpreter; providing for the compensation of interpreters; authorizing individuals to seek assistance through circuit clerks or the director of the administrative office of the supreme court of appeals; and providing for interpreters in case of foreign language or other reasons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-7. Interpreters required.

(a) In any court proceeding wherein a party or witness cannot readily understand or verbally communicate the English language because he is deaf or a deaf mute or because of any other hearing impairment, such person shall have the right to have a qualified interpreter to assist him at every stage of the proceeding. Such right shall also pertain in any proceeding before administrative boards, commissions or agencies of this state or any political subdivision or municipality thereof, and in coroners’ inquests and grand jury proceedings.

(b) The director of the administrative office of the supreme court of appeals shall establish a program to facilitate the use of interpreters in courts of this state and in extrajudicial criminal proceedings as provided for in this section.

(1) The director shall prescribe, determine and certify the qualifications of persons who may serve as certified interpreters in courts of this state in proceedings involving the hearing impaired. Persons certified by the director shall be interpreters certified by the national registry of interpreters for the deaf, or the West Virginia registry of interpreters for the deaf or approved by the chief of services for the deaf and hearing impaired of West Virginia of the West Virginia division of vocational rehabilitation, or shall be such other persons deemed by the director to be qualified by education, training and experience. The director shall maintain a cur-
rent master list of all interpreters certified by the director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters.

(2) Each circuit court shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as oral or manual interpreters for the hearing impaired by the director of the administrative office of the supreme court of appeals in accordance with the certification program established pursuant to this section.

(3) In any criminal or juvenile proceeding, or other proceeding described in section five, article eleven, chapter fifty-one of this code, the judge of the circuit court in which such proceeding is pending, or, if such proceeding is in a magistrate court, then the judge of the circuit court to which such proceeding may be appealed or presented for judicial review, shall, with the assistance of the director of the administrative office of the supreme court of appeals, utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the judge, the services of an otherwise competent interpreter, if the judge determines on his own motion or on the motion of a party that such party or a witness who may present testimony in the proceeding suffers from a hearing impairment so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony. The utilization of an interpreter shall be appropriate at any stage of the proceeding, judicial or extrajudicial, at which a person would be entitled to representation by an attorney and a waiver of the right to counsel shall not constitute a waiver of the right to an interpreter as provided for by this section.

(c) Whenever a qualified interpreter is appointed pursuant to the provisions of subsection (b) of this section, the court shall, at the conclusion of the proceedings or interrogation, by order, fix the compensation of such interpreter. The compensation shall be not less than fifteen dollars per hour, nor more than fifty dollars per day, plus reimbursement for all reasonable and necessary expenses actually incurred in the
performance of such duties, but expenses shall not be incurred in excess of the prevailing rate for state employees. In all such cases, the compensation shall be paid by the state auditor from the fund out of which appointed counsel are paid in felony cases. In proceedings before administrative boards, commissions and agencies, the compensation shall be fixed by such board, commission or agency and paid, within the limit of available funds, by such board, commission or agency.

(d) In any proceeding described in subdivision (3), subsection (b) of this section, if the circuit judge does not appoint an interpreter, an individual requiring the services of an interpreter may seek the assistance of the clerk of the circuit court or the director of the administrative office of the supreme court of appeals in obtaining the assistance of a certified interpreter.

(e) Whenever an interpreter is necessary in any court proceeding because a witness or party speaks only a foreign language or for any other reason, an interpreter may be sworn truly to interpret.

CHAPTER 95
(Com. Sub. for H. B. 1010—By Mr. Steptoe)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, seven, eight, nine, thirteen, fourteen and sixteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section thirteen-b; to amend article five-a of said chapter by adding thereto a new section, designated section six-a; and to amend said chapter forty-nine by adding thereto a new article, designated article five-c, all relating to jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; certain extra-judicial statements by a child not admissible; hearings; tran-
scripts; institution of proceedings by petition; contents of petition; notice to child and parents; notice requirements; taking a child into custody under certain named conditions; detention hearing to be held by judge, juvenile referee or magistrate; constitutional guarantees; preliminary hearing may be held in conjunction with detention hearing, except where detention hearing is by a magistrate; preliminary hearing, time when held; right to counsel; improvement period; methods of disposition; appeal; alternative methods of disposition; authority of the court to order fines, restitution or reparation and participation in public service projects; revocation or denial of driving privileges; financial inability of child; permitting such alternate disposition of juveniles tried as adults; modification of dispositional orders in juvenile courts; providing that precedence be given to appropriate dispositional alternative even though less restrictive alternatives have not been exhausted; providing for reconsideration of sentence of juvenile convicted as an adult; development of comprehensive state plan for pre-disposition detention; time limit; major contents of plan; responsibilities of commissioner of department of welfare pending development of plan; creation of legislative commission on juvenile law; powers and duties; appointment of members; terms; advisory task force; time and place of meetings; officers; assistance of other agencies; and expenses and reimbursement.

Be it enacted by the Legislature of West Virginia:

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

Article.


5A. Juvenile Referee System.

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ARTICLE 5. JUVENILE PROCEEDINGS.

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

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

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

18 As used in this section, "violation of a traffic law of West Virginia" means violation of any law contained in chapters seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code except sections one and two, article four (hit and run) and sections one (negligent homicide), two (driving under influence of alcohol, controlled substances or drugs) and four (reckless driving), article five, chapter seventeen-c of this code.
(b) Any child shall be entitled to be admitted to bail or
recognizance in the same manner as a person over the age of
eighteen years and shall have the protection guaranteed by
article III of the constitution of West Virginia.

(c) The child shall have the right to be effectively repre-
sented by counsel at all stages of proceedings under the pro-
visions of this article. If the child, parent or custodian exe-
cutes an affidavit showing that he cannot pay for an attorney
appointed by the court or referee, the court shall appoint
counsel, to be paid as provided for in article twenty-one,
chapter twenty-nine of this code.

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

Except as herein modified, at all adjudicatory hearings, the
rules of evidence applicable in criminal cases shall apply,
including the rule against written reports based upon hearsay.
Unless otherwise specifically provided in this chapter, all
procedural rights afforded adults in criminal proceedings shall
be applicable. Extrajudicial statements, other than res gestae,
by a child under fourteen years of age to law-enforcement
officials or while in custody, shall not be admissible unless
made in the presence of the child's counsel.

Extrajudicial statements, other than res gestae by a child
under sixteen years of age but above the age of thirteen to law-
enforcement officers or while in custody, shall not be admis-
sible unless made in the presence of the child’s counsel or made
in the presence of and with the consent of the child’s parent
or custodian who has been fully informed regarding the child’s
right to a prompt detention hearing, his right to counsel in-
cluding appointed counsel if he cannot afford counsel, and his
privilege against self-incrimination. A transcript or recording
shall be made of all transfer, adjudicatory and dispositional
hearings. At the conclusion of any hearing, the court shall
make findings of fact and conclusions of law, and the same shall appear of record.

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

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

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

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

(b) The parents, guardians or custodians shall be named in the petition as respondents, and shall be served with notice of the proceedings in the same manner as provided in subsection (a) of this section for service upon the child and required to appear with the child at the time and place set for the proceedings unless such respondent cannot be found after diligent search. If any such respondent cannot be found after diligent search, the court may proceed without further requirement of notice: Provided, That the court may order service by first class mail to the last known address of such respondent. The respondent shall have fifteen days after the date of mailing to appear or answer.

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

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

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

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

(a) In proceedings instituted by the filing of a juvenile petition the circuit court may enter an order directing that a child be taken into custody only if one of the following conditions exist: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health, safety and welfare of the child demand such custody; (3) the child is a fugitive from a lawful custody or commit-
ment order of a juvenile court; or (4) the child has a record of willful failure to appear at juvenile proceedings, and custody is necessary to assure his presence before the court.

A detention hearing shall be held without delay by the judge, juvenile referee or magistrate authorized to conduct such hearing, and in no event shall the delay exceed the next succeeding judicial day, excluding Saturday, and such child shall be released on recognizance to his parent, guardian or custodian unless findings are made as specified in subsection (d) of this section.

(b) Absent a warrant or court order, a child may be taken into custody by a law-enforcement official only if one of the following conditions exist: (1) Grounds exist for the arrest of an adult in identical circumstances; (2) emergency conditions exist which in the judgment of the officer pose imminent danger to the health, safety and welfare of the child; (3) the official has reasonable grounds to believe that the child is a runaway without just cause from the child's parents or legal custodian and the health, safety and welfare of the child is endangered; or (4) the child is a fugitive from a lawful custody or commitment order of a juvenile court.

Upon taking a child into custody, with or without a warrant or court order, the official shall: (i) Immediately notify the child's parent, custodian or, if the parent or custodian cannot be located, a close relative; (ii) release the child into the custody of his parent or custodian unless the circumstances warrant otherwise; (iii) refer the matter to the prosecuting attorney, state department or probation officer for proceedings under this article; and (iv) if a child is being held in custody absent a warrant or court order, cause a warrant, petition or order, as the case may be, to be immediately issued authorizing the detention of such child.

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

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

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

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

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

1. If the child is not represented by counsel, inform the child and his parents, guardian or custodian or any other person standing in loco parentis to him of the child’s right to be represented at all stages of proceedings under this article and the right to have counsel appointed.
2. Appoint counsel by order entered of record, if counsel has not already been retained, appointed or knowingly waived.
3. Determine after hearing if there is probable cause to believe that the child is a delinquent child. If probable cause is not found, the child shall be released and the proceedings dismissed. If probable cause is found, the case shall proceed to adjudication. At the hearing or as soon thereafter as is practicable, the date for the adjudicatory hearing shall be set to give the child, the child’s parents and attorney at least ten days’ notice, unless notice is waived by all parties.
4. In lieu of placing the child in a detention facility when
bond is not provided, the court may place the child in the
temporary custody of the state department pursuant to sec-
tion sixteen, article two of this chapter or may place the
child in the custody of a probation officer. If the child is
detained in custody, the detention shall not continue longer
than thirty days without commencement of the adjudicatory
hearing unless good cause for a continuance be shown by either
party or, if a jury trial be demanded, no longer than the next
regular term of said court.

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

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


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

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

(1) Dismiss the petition;

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

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

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

(5) Upon a finding that no less restrictive alternative
would accomplish the requisite rehabilitation of the child,
and upon an adjudication of delinquency pursuant to sub-
division (1), section four, article one of this chapter, commit
the child to an industrial home or correctional institution for
children. Commitments shall not exceed the maximum term
for which an adult could have been sentenced for the same
offense, with discretion as to discharge to rest with the direc-
tor of the institution, who may release the child and return
him to the court for further disposition;

(6) Upon an adjudication of delinquency pursuant to
subsection (3) or (4), section four, article one of this chapter,
and upon a finding that the child is so totally unmanageable,
ingovernable and antisocial that the child is amenable to no
treatment or restraint short of incarceration, commit the child
to a rehabilitative facility devoted exclusively to the custody
and rehabilitation of children adjudicated delinquent pursuant
to said subsection (3) or (4). Commitments shall not exceed
the maximum period of one year with discretion as to dis-
charge to rest with the director of the institution, who may
release the child and return him to the court for further disposi-
tion; or

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

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

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

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

§49-5-13b. Authority of the courts to order fines, revocation of
vehicle privileges and restitution.

(a) In addition to the methods of disposition provided in
section thirteen of this article, the court may enter an order
imposing one or more of the following penalties, conditions
and limitations:
(1) Impose a fine not to exceed one hundred dollars upon such child.

(2) Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent.

(3) Require the child to participate in a public service project under such conditions as the court prescribes.

(4) When the child is fifteen years of age or younger and has been adjudged delinquent, the court may order that the child is not eligible to be issued a junior probationary operator's license or when the child is between the ages of sixteen and eighteen years and has been adjudged delinquent, the court may order that the child is not eligible to operate a motor vehicle in this state, and any junior or probationary operator's license shall be surrendered to the court. Such child's driving privileges shall be suspended for a period not to exceed two years, and the clerk of the court shall notify the commissioner of the department of motor vehicles of such order.

(b) Nothing herein stated shall limit the discretion of the court in disposing of a juvenile case: Provided, That the juvenile shall not be denied probation or any other disposition pursuant to this article because the juvenile is financially unable to pay a fine or make restitution or reparation: Provided, however, That all penalties, conditions and limitations imposed under this section shall be based upon a consideration by the court of the seriousness of the offense, the child's ability to pay, and a program of rehabilitation consistent with the best interests of the child.

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


(a) A dispositional order of the court may be modified:
(1) Upon the motion of the probation officer, a state department official or prosecuting attorney; or

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

Upon such a motion or request, the court shall conduct a review proceeding, except that if the last dispositional order was within the previous six months the court may deny a request for review. Notice in writing of a review proceeding shall be given to the child, the child's parent or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the child, the child's parent or custodian, the child's social worker and other persons providing assistance to the child or child's family. If the motion or request for review of disposition is based upon an alleged violation of a court order, the court may modify the dispositional order to a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the absence of such proof, the court may decline to modify the dispositional order or may modify the order to one of the less restrictive alternatives set forth in section thirteen of this article. No child shall be required to seek a modification order as provided in this section in order to exercise his right to seek release by habeas corpus.

(b) In a hearing for modification of a dispositional order, or in any other dispositional hearing, the court shall give precedence to the least restrictive alternative consistent with the best interests and welfare of the public and the child: Provided, That a less restrictive alternative need not be ordered merely because such less restrictive alternative has not been previously utilized with respect to the particular child who is the subject of the proceeding.

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

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

25 (b) No child who has been convicted of an offense under
26 the adult jurisdiction of the circuit court shall be held in
27 custody in a penitentiary of this state: Provided, That
28 such child may be transferred from a secure juvenile facility
29 to a penitentiary after he shall attain the age of eighteen
30 years if, in the judgment of the commissioner of the depart­
31 ment of corrections and the court which committed such
32 child, such transfer is appropriate: Provided, however, That
33 any other provision of this code to the contrary notwithstanding,
34 prior to such transfer the child shall be returned to the
35 sentencing court for the purpose of reconsideration and
36 modification of the imposed sentence, which shall be based
37 upon a review of all records and relevant information relating
38 to the child’s rehabilitation since his conviction under the
39 adult jurisdiction of the court.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-6a. State plan for predisposition detention of juveniles;
responsibilities of commissioner of welfare until de­
velopment of state plan.

1 (a) The commissioner of the department of welfare and
the legislative commission on juvenile law shall develop a comprehensive plan to establish a unified state system of predispositional detention for juveniles to be submitted to the West Virginia Legislature no later than the first day of January, one thousand nine hundred eighty-three. The plan shall be developed with input from the department of corrections, the governor’s task force on crime, delinquency and correction and judicial and law-enforcement officials from throughout the state.

The plan shall include, but not be limited to, the following:

(1) The development of the position of youth services coordinators. These coordinators would operate under the direction of the department of welfare and would serve each judicial district.

(2) The development of a coordinated plan for the effective and efficient use of juvenile detention facilities operated by local units of government and the state, including those operated regionally by the department of welfare. Standards and criteria shall be established for the use of detention. Priorities for the utilization of available space and transportation of juveniles to and from detention facilities shall also be established.

(3) Recommendations on the use of regional detention centers for detention hearings.

(4) Recommendations regarding the use of emergency home shelters and foster homes for temporary detention.

(5) Recommendations regarding the use of regional detention facilities and charges to counties for such services.

(6) An evaluation of the personnel needs and cost of maintaining all facilities and services recommended in the plan.

(b) Until the development and implementation of the plan set forth in subsection (a) of this section, the commissioner of the department of welfare shall do the following:

(1) Identify and coordinate all programs currently available in local communities for children in need of detention.
These programs shall be listed in a central resource directory available for local authorities. This directory shall identify which juveniles are acceptable to each program and the cost of each program. Any program listed which is operated by a county or community must conform to guidelines established by the department of welfare.

(2) Develop additional emergency shelters in those communities where no such facilities are now in existence, and where there is a demonstrable need for them.

(3) Coordinate a transportation assistance program for counties which have significant difficulty transporting youth to detention facilities. Grants will be made on the basis of proposals submitted to the department by local government units demonstrating special needs based on travel distance, youth detention need and lack of local resources despite good faith attempts to establish or utilize local programs. Reimbursement grants will not exceed forty thousand dollars for fiscal year one thousand nine hundred eighty-two.

ARTICLE 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

§49-5C-1. Creation of legislative commission.

§49-5C-2. Powers and duties.

§49-5C-3. Appointment of members; terms.

§49-5C-4. Advisory task force.

§49-5C-5. Time and place of meetings; officers.

§49-5C-6. Assistance of other agencies.

§49-5C-7. Expenses; reimbursement.

§49-5C-1. Creation of legislative commission.

There is hereby created the permanent legislative commission on juvenile law to study, review and examine laws relating to juveniles.

§49-5C-2. Powers and duties.

The powers and duties of the commission shall include, but not be limited to, the following:

(a) Studying the status and effectiveness of the laws relating to juvenile proceedings, the juvenile referee system, and the West Virginia juvenile offender rehabilitation act, and making recommendations as to any changes needed in the system and the ways and means to effect such changes;
(b) Making further and more specific recommendations within the scope of the study as to the detention of juvenile offenders, considering both short and long term detention;

c) Consideration of existing juvenile detention facilities and making recommendations, with particular attention to financing, as to the need for updating present facilities and/or creating new facilities and the location of each;

d) Filing of a report to each regular session of the Legislature which will include drafts of legislation necessary to effectuate any recommendations; and

e) Maintenance of reference materials concerning juvenile offenders including, without limitation, information as to laws and systems in other states.

§49-SC-3. Appointment of members; terms.

The commission shall consist of:

1. Three members of the Senate to be appointed by the president of the Senate and three members of the House of Delegates to be appointed by the speaker of the House. No more than two of the three members appointed by the president of the Senate and the speaker of the House, respectively, may be members of the same political party.

2. The commissioner of the department of welfare and the commissioner of corrections, who shall serve as ex officio members.

3. Two persons trained and employed as school guidance counselors, one to be appointed by the president of the Senate and one to be appointed by the speaker of the House.

The first appointed members of the commission shall serve for a term expiring on the thirtieth day of June in the year of the next succeeding regular session of the Legislature. At the commencement of such next succeeding regular session and at the commencement of regular sessions every two years thereafter, members of the commission shall be appointed for two-year terms beginning the first day of July in the year of each such regular session. Vacancies on the commission shall be filled for unexpired terms in the same manner as appointments to the commission.
§49-5C-4. Advisory task force.

1 The commission may provide for an advisory task force to aid and assist the commission in the exercise of its powers and duties.

§49-5C-5. Time and place of meetings; officers.

1 The commission shall hold meetings at such times and places as it may designate. It shall be headed by two cochairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates.

§49-5C-6. Assistance of other agencies.

1 The commission may request information from any state officer or agency in order to assist in carrying out the terms of this article, and such officer or agency is authorized and directed to promptly furnish any data requested.

§49-5C-7. Expenses; reimbursement.

1 The members of the commission and its assistants shall be reimbursed for all expenses actually and necessarily incurred in the performance of their duties hereunder from the fund of the joint committee on government and finance. Compensation and other expenses of the commission may be paid from the fund of the joint committee on government and finance.

CHAPTER 96

(H. B. 1575—By Mr. Yanni and Mr. Wiedebusch)

[Passed March 8, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulation of operation of steam boilers; fees to be charged for making inspections and issuing permits.
Be it enacted by the Legislature of West Virginia:

That section seven, article three, 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 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-7. Regulation of operation of steam boilers.

1 Any person owning or operating a steam boiler carrying more than fifteen pounds pressure per square inch (except boilers on railroad locomotives subject to inspection under federal laws, portable boilers used for agricultural purposes, boilers on automobiles, boilers of steam fire engines brought into the state for temporary use in times of emergency for the purpose of checking conflagrations, boilers used in private residences which are used solely for residential purposes, any sectional boilers, small portable boilers commonly used in the oil and gas industry about their wells and tool houses, and boilers under the jurisdiction of the United States) in this state shall first obtain a permit to operate a steam boiler from the commissioner of labor, or from an inspector working under his jurisdiction.

2 Applications for permits to operate a steam boiler must be accompanied by a sworn statement made by the owner or operator of such boiler, setting forth the condition of the boiler and its appurtenances at which time, if the facts disclosed by such statement meet the safety requirements established under this article, the commissioner of labor shall issue a temporary permit, which shall be valid until such boiler has been inspected by a boiler inspector authorized by the state commissioner of labor; thereupon, if the boiler meets the safety requirements established under this article, the commissioner of labor shall issue an annual permit to operate such steam boiler: Provided, That boilers which are insured by an insurance company operating in this state and which are inspected by such insurance company's boiler inspector shall not be subject to inspection by the state department of labor, during any twelve months' period during which an inspection is made by the insurance company's boiler inspector.
33 The commissioner of labor or state boiler inspector shall have the authority to inspect steam boilers in this state. To carry out the provisions of this section, the commissioner of labor shall prescribe rules and regulations under which boilers may be constructed and operated, according to their class. The commissioner of labor shall be authorized to revoke any permit to operate a steam boiler if the rules prescribed by the commissioner of labor, or his authorized representative, are violated or if a condition shall prevail which is hazardous to the life and health of persons operating or employed at or around the boiler. Any person or corporation who shall operate a steam boiler for which a permit is necessary under the provisions of this section, without first obtaining such permit to operate a steam boiler, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars. Every day a steam boiler requiring a permit to operate is operated without such permit shall be considered a separate offense.

52 The commissioner may charge such fee as he determines reasonable for the inspection of boilers by the department of labor boiler inspector of the commissioner’s authorized boiler inspection agency, for the processing of inspection reports from insurance companies, for issuing annual permits to operate boilers and for commissioning insurance company boiler inspectors. Such fees shall be established by a rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

CHAPTER 97
(S. B. 107—By Mr. Ash and Mr. Gilligan)

[Passed February 15, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to repeal article eight, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment of the commission
on manpower, technology and training; setting procedure for operation; requiring cooperation of state departments; setting forth duties and powers; allowing inspection of records; and requiring reports.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. WEST VIRGINIA COMMISSION ON MANPOWER, TECHNOLOGY AND TRAINING.

§1. Repeal of article relating to the commission on manpower, technology and training.

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

CHAPTER 98
(Com. Sub. for S. B. 312—By Mrs. Chace)

[Passed March 10, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, five and eight, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-nine by adding thereto a new section, designated section nine, relating to law-enforcement officer training requirements; defining terms; providing for regional training locations; part-time curricula standards for the qualification of officers; credit to be given for classroom hours earned outside law-enforcement training academies; providing an exemption from such requirements for officers who have served for at least seven consecutive years; providing for automatic termination of law-enforcement officers who fail to be certified and prohibiting employment of those officers until they can become certified; providing for requirements for qualifications and training which exceed the minimum requirements of article; requiring law-enforcement officers to be paid wages, tuition and expenses
during training; providing that county and municipal govern­
ernments may contract to recover training expenses of
officers who discontinue employment; and providing for
special railroad police to attend law-enforcement training
academies under certain conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT OFFICER TRAINING AND
CERTIFICATION.

§30-29-1. Definitions.
§30-29-3. Duties of the governor’s committee and the subcommittee.
§30-29-5. Certification requirements.
§30-29-8 Agreements to remiburse employers for wages and expenses of em­
ployees trained but not continuing employment.
§30-29-9. Special railroad police permitted to attend law-enforcement train­
ing academies.

§30-29-1. Definitions.

1 For purposes of this article, unless a different meaning
2 clearly appears in the context:

3 “Approved law-enforcement training academy” means
4 any training facility which is approved and authorized
5 to conduct law-enforcement training as provided in this
6 article;

7 “Chief executive” means the superintendent of the de­
8 partment of public safety; the chief conservation officer,
9 department of natural resources; the sheriff of any West
10 Virginia county; or the chief of any West Virginia munici­
11 pal law-enforcement agency;

12 “County” means the fifty-five major political subdi­
13 visions of the state;

14 “Exempt rank” means any noncommissioned or com­
15 missioned rank of sergeant or above;
"Governor's committee on crime, delinquency and correction" or "governor's committee" means the governor's committee on crime, delinquency and correction established as a state planning agency pursuant to section one, article nine of chapter fifteen of this code;

"Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or college campus security personnel:

"Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

"Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

"Subcommittee" or "law-enforcement training subcommittee" means the subcommittee of the governor's committee on crime, delinquency and correction created by section two of this article; and

"West Virginia law-enforcement agency" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

§30-29-3. Duties of the governor's committee and the subcommittee.

Upon recommendation of the subcommittee, the governor's committee shall, by or pursuant to rule or regulation:

(a) Provide funding for the establishment and support of law-enforcement training academies in the state;
(b) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state in order to provide access to each law-enforcement agency in the state in accordance with available funds;

(c) Establish minimum law-enforcement instructor qualifications;

(d) Certify qualified law-enforcement instructors;

(e) Maintain a list of approved law-enforcement instructors;

(f) Promulgate standards governing the qualification of law-enforcement officers and the entry level law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of four hundred classroom hours, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months, or a full-time curricula;

(g) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

(h) Certify law-enforcement officers, as provided in section five of this article;

(i) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article; and

(j) Submit, on or before the thirtieth day of September of each year, to the governor, and upon request to individual members of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.
§30-29-5. Certification requirements.

(a) Except as provided in subsections (b) and (g) below, no person may be employed as a law-enforcement officer by any West Virginia law-enforcement agency on or after the effective date of this article unless the person is certified, or is certifiable in one of the manners specified in subsections (c) through (e) below, by the governor's committee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article.

(b) Except as provided in subsection (g) below, a person who is not certified, or certifiable in one of the manners specified in subsections (c) through (e) below, may be conditionally employed as a law-enforcement officer until certified: Provided, That, within ninety calendar days of the commencement of employment or the effective date of this article if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. An applicant who satisfactorily completes the program shall, within thirty days of completion, make written application to the governor's committee requesting certification as having met the minimum entry level law-enforcement qualification and training program requirements. Upon determining that an applicant has met the requirements for certification, the governor's committee shall forward to the applicant documentation of certification. An applicant who fails to complete the training program to which he or she is first admitted, or was admitted upon reapplication may not be certified by the governor's committee.

(c) Any person who is employed as a law-enforcement
officer on the effective date of this article and is a graduate of the West Virginia basic police training course, the West Virginia department of public safety cadet training program, or other approved law-enforcement training academy, is certifiable as having met the minimum entry law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy. To receive certification, the person shall make written application within ninety calendar days of the effective date of this article to the governor's committee requesting certification. The governor's committee shall review the applicant's relevant scholastic records and, upon determining that the applicant has met the requirement for certification, shall forward to the applicant documentation of certification.

(d) Any person who is employed as a law-enforcement officer on the effective date of this article and is not a graduate of the West Virginia basic police training course, the West Virginia department of public safety cadet training program, or other approved law-enforcement training academy, is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy if the person has been employed as a law-enforcement officer for a period of not less than seven consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the governor's committee requesting certification. The application shall include notarized statements as to the applicant's years of employment as a law-enforcement officer. The governor's committee shall review the application and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(e) Any person who begins employment on or after the effective date of this article as a law-enforcement officer is certifiable as having met the minimum entry
level law-enforcement training program requirements and is exempt from attending a law-enforcement academy if the person has satisfactorily completed a course of instruction in law enforcement equivalent to or exceeding the minimum applicable law-enforcement training curricula promulgated by the governor's committee. To receive certification, the person shall make written application within ninety calendar days following the commencement of employment to the governor's committee requesting certification. The application shall include a notarized statement of the applicant's satisfactory completion of the course of instruction in law-enforcement, a notarized transcript of the applicant's relevant scholastic records, and a notarized copy of the curriculum of the completed course of instruction. The governor's committee shall review the application and, if it finds the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(f) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified shall be automatically terminated and no further emoluments shall be paid to such officer by his employer. Any person terminated shall be entitled to reapply, as a private citizen, to the subcommittee for training and certification, and upon being certified may again be employed as a law-enforcement officer in this state.

(g) Nothing in this article may be construed as prohibiting any governing body, civil service commission or chief executive of any West Virginia law-enforcement agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement qualifications and training curricula promulgated by the governor's committee.

(h) The requirement of this section for qualification, training and certification of law-enforcement officers shall not be mandatory during the two years next succeeding the effective date of this article for the law-enforcement...
officers of a law-enforcement agency which employs a
civil service system for its law-enforcement personnel,
nor shall such provisions be mandatory during the five
years next succeeding the effective date of this article for
law-enforcement officers of a law-enforcement agency
which does not employ a civil service system for its law-
enforcement personnel: Provided, That such require-
ments shall be mandatory for all such law-enforcement
officers until their law-enforcement officials apply for
their exemption by submitting a written plan to the
governor's committee which will reasonably assure com-
pliance of all law-enforcement officers of their agencies
within the applicable two-or five-year period of exemp-
tion.

(i) Any person aggrieved by a decision of the gov-
ernor's committee made pursuant to this article may
contest such decision in accordance with the provisions
of article five, chapter twenty-nine-a of this code.

§30-29-8. Agreements to reimburse employers for wages and
expenses of employees trained but not continuing
employment.

A West Virginia law-enforcement agency shall pay
compensation to employees, including, without limita-
tion, wages, salaries, benefits, tuition and expenses for
the employees' attendance at a law-enforcement training
academy. In consideration therefor, the county commis-
sion or municipal government may require of its em-
ployees by written agreement entered into with each of
them in advance of such attendance at a training academy
that, if an employee should voluntarily discontinue em-
ployment anytime within one year immediately following
completion of the training curriculum, he or she shall be
obligated to pay to such county commission or municipal
government a pro rata portion of the sum of such com-
pensation equal to that part of such year which the
employee has chosen not to remain in the employ of
the county commission or municipal government.
§30-29-9. Special railroad police permitted to attend law-enforcement training academies.

1 Special railroad police officers shall be permitted to attend law-enforcement training academies for law-enforcement officers: Provided, That the railroad companies shall pay a tuition fee in an amount sufficient to pay the entire cost of training each employee who attends an academy, which fee shall in no event be less than forty-five dollars per day: Provided, however, That special railroad police officers shall be permitted to attend an academy only as space may be available.

CHAPTER 99
(Com. Sub. for S. B. 263—By Mr. Wise)

[Passed March 12, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to apportionment of the Senate and the House of Delegates; providing a short title; defining the terms "county," "enumeration district," "block," "block numbering area," "census tract" and "magisterial district" for the purposes of apportioning districts; requiring that the clerk of the Senate and the House of Delegates file United States census maps in the office of the secretary of state; dividing the state into seventeen senatorial districts for the purpose of electing thirty-four members of the Senate; dividing the state into forty delegate districts for the purpose of electing one hundred delegates; requiring county commissions to alter the boundary lines of any election precinct that contains territory contained in more than one senatorial district as established hereto, or more than one delegate district as established hereto, so that no election precinct contains territory included in more than one senatorial or delegate district; and providing...
that members of the Senate elected in the general elections of one thousand nine hundred seventy-eight and one thousand nine hundred eighty, and that members of the House of Delegates elected in the general election of one thousand nine hundred eighty, as well as any persons appointed to fill a vacancy in the office of member of the Senate or House of Delegates, shall continue to represent their senatorial or delegate district for the term for which each was elected or appointed.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article two, chapter 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. APPORTIONMENT OF REPRESENTATION.

§1-2-1. Senatorial districts.


§1-2-1. Senatorial districts.

1 (a) This section shall be known and may be cited as "The Senate Redistricting Act of 1982."

2 (b) As used in this section:

3 (1) "County" means the territory comprising a county of this state as such county existed on the first day of January, one thousand nine hundred eighty, notwithstanding any boundary changes thereof made subsequent thereto;

4 (2) "Enumeration district," "block" and "census tract" mean those geographic areas as defined by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred eighty census of population and described on census maps prepared by the bureau of the census. Such maps are, at the time of this enactment, maintained by the bureau of the census and shall be filed in the office of the secretary of state by the clerk of the Senate not later than the first day of July, one thousand nine hundred eighty-three;

5 (3) "Magisterial district" means the territory compris-
ing a magisterial district of this state as reported to and used by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred eighty census of population and described on census maps prepared by the bureau of the census;

(4) "Incumbent senator" means a senator elected at the general election held in the year one thousand nine hundred eighty, or at any general election thereafter, with an unexpired term of at least two years in duration;

(c) The Legislature recognizes that in dividing the state into senatorial districts, the Legislature is bound not only by the United States Constitution but also by the West Virginia Constitution; that in any instance where the West Virginia Constitution conflicts with the United States Constitution, the United States Constitution must govern and control, as recognized in section one, article I of the West Virginia Constitution; that the United States Constitution, as interpreted by the United States supreme court and other federal courts, requires state legislatures to be apportioned so as to achieve equality of population as near as is practicable, population disparities being permissible where justified by rational state policies; and that the West Virginia Constitution requires two senators to be elected from each senatorial district for terms of four years each, one such senator being elected every two years, with one half of the senators being elected biennially, and requires senatorial districts to be compact, formed of contiguous territory and bounded by county lines. The Legislature finds and declares that it is not possible to divide the state into senatorial districts so as to achieve equality of population as near as is practicable as required by the United States supreme court and other federal courts and at the same time adhere to all of these provisions of the West Virginia Constitution; but that, in an effort to adhere as closely as possible to all of these provisions of the West Virginia Constitution, the Legislature, in dividing the state into senatorial districts, as described and constituted in subsection (d) hereof, has:
(1) Adhered to the equality of population concept, while at the same time recognizing that from the formation of this state in the year one thousand eight hundred sixty-three, each Constitution of West Virginia and the statutes enacted by the Legislature have recognized political subdivision lines and many functions, policies and programs of government have been implemented along political subdivision lines;

(2) Made the senatorial districts as compact as possible, consistent with the equality of population concept;

(3) Formed the senatorial districts of "contiguous territory" as that term has been construed and applied by the West Virginia supreme court of appeals;

(4) Deviated from the long-established state policy, recognized in (1) above, by crossing county lines only when necessary to ensure that all senatorial districts were formed of contiguous territory or when adherence to county lines produced unacceptable population inequalities and only to the extent necessary in order to maintain contiguity of territory and to achieve acceptable equality of population;

(5) When crossing county lines, adhered, whenever possible, in furtherance of the long-established state policy, recognized in (1) above, to the boundary lines of magisterial districts, tax districts or municipal corporations; and

(6) Also taken into account in crossing county lines, to the extent feasible, the community interests of the people involved.

(d) The Senate shall be composed of thirty-four senators, one senator to be elected at the general election to be held in the year one thousand nine hundred eighty-two and biennially thereafter for a four-year term from each of the senatorial districts hereinafter in this subsection described and constituted as follows:

(1) The counties of Brooke and Hancock and the magisterial districts of Liberty-Triadelphia and Triadelphia of
the county of Ohio, and all of magisterial district Rich-
land-Washington except census tract four of the county
of Ohio, and census tract nineteen-point-zero-one of the
magisterial district of Ritchie-Center-Webster of the
county of Ohio shall constitute the first senatorial dis-

(2) The counties of Doddridge, Marshall, Ritchie, Tyler
and Wetzel and that portion of the county of Ohio not
included in the first senatorial district shall constitute
the second senatorial district;

(3) The counties of Pleasants, Wirt and Wood and the
magisterial districts of Sheridan and Center of the county
of Calhoun, shall constitute the third senatorial district;

(4) The counties of Jackson, Mason, Putnam and Roane
and that portion of the county of Calhoun not included in
the third senatorial district shall constitute the fourth
senatorial district;

(5) The county of Cabell and those portions of census
tracts fifty-one and fifty-two of the magisterial district of
Westmoreland contained within the city of Huntington
of the county of Wayne, and that portion of census tract
fifty-two of the magisterial district of Westmoreland con-
tained within the city of Ceredo of the county of Wayne,
and census tract two hundred two of the magisterial
district of Ceredo of the county of Wayne, and those por-
tions of census tracts two hundred three and two
dney, and that portion of block nine hundred three
of census tract two hundred four of the magisterial
district of Ceredo not included in the city of Ceredo in
the county of Wayne shall constitute the fifth senatorial
district;

(6) The county of Mingo and that portion of the county
of Wayne not included in the fifth or seventh senatorial
districts, and that portion of the county of McDowell not
included in the tenth senatorial district shall constitute
the sixth senatorial district;
(7) The counties of Boone, Lincoln and Logan and the magisterial district of Stonewall of the county of Wayne and enumeration districts two hundred, two hundred one, two hundred two, two hundred three, two hundred eleven and two hundred twelve within the magisterial district of Union of the county of Wayne shall constitute the seventh senatorial district;

(8) The county of Kanawha shall constitute the eighth senatorial district;

(9) The county of Wyoming and that portion of the county of Raleigh not included in the tenth senatorial district shall constitute the ninth senatorial district;

(10) The counties of Mercer, Monroe and Summers and the magisterial districts of Elkhorn and Northfork of the county of McDowell and enumeration districts six hundred twenty-eight and six hundred twenty-nine of the third magisterial district of the county of Raleigh shall constitute the tenth senatorial district;

(11) The counties of Clay, Fayette and Greenbrier and the magisterial districts of Jefferson and Grant of the county of Nicholas shall constitute the eleventh senatorial district;

(12) The counties of Braxton, Pendleton, Pocahontas, Randolph, Upshur and Webster and that portion of the county of Nicholas not included in the eleventh senatorial district shall constitute the twelfth senatorial district;

(13) The counties of Gilmer, Harrison and Lewis and census tract two hundred twelve and that portion of census tract two hundred eleven not contained within the city of Fairmont of the magisterial district of Grant of the county of Marion and those portions of census tract two hundred thirteen contained within the towns of Monongah and Worthington in the magisterial district of Lincoln of the county of Marion shall constitute the thirteenth senatorial district;

(14) That portion of the county of Marion not included
in the thirteenth senatorial district and that portion of the county of Monongalia not included in the fifteenth senatorial district shall constitute the fourteenth senatorial district;

(15) The counties of Barbour, Grant, Preston, Taylor and Tucker and that portion of the county of Mineral not included in the sixteenth senatorial district and census tracts one hundred eighteen and one hundred nineteen and enumeration districts one thousand twenty-four, one thousand twenty-six, one thousand twenty-eight and one thousand twenty-nine all of the eastern magisterial district of the county of Monongalia and census tract one hundred thirteen of the western magisterial district of the county of Monongalia shall constitute the fifteenth senatorial district;

(16) The counties of Berkeley, Hampshire, Hardy, Jefferson and Morgan and the magisterial districts of Cabin Run and Welton of the county of Mineral and enumeration districts six hundred fifty and six hundred fifty-two of the magisterial district of Frankfort of the county of Mineral shall constitute the sixteenth senatorial district; and

(17) The county of Kanawha shall constitute the seventeenth senatorial district.

e) The West Virginia Constitution further provides, in section four, article VI thereof, that where a senatorial district is composed of more than one county, both senators for such district shall not be chosen from the same county, a residency dispersal provision which is clear with respect to senatorial districts which follow county lines, as required by such Constitution, but which is not clear in application with respect to senatorial districts which cross county lines. However, in an effort to adhere as closely as possible to the West Virginia Constitution in this regard, the following additional provisions, in furtherance of the rationale of such residency dispersal provision and to give meaning and effect thereto, are hereby established:

(1) With respect to a senatorial district which is com-
posed of one or more whole counties and one or more parts of another county or counties, no more than one senator shall be chosen from the same county or part of a county to represent such senatorial district;

(2) With respect to a senatorial district which does not contain any whole county but only parts of two or more counties, no more than one senator shall be chosen from the same part to represent such senatorial district; and

(3) With respect to superimposed senatorial districts which contain only one whole county, all senators shall be chosen from such county to represent such senatorial districts.

(f) Candidates for the Senate shall be nominated as provided in section four, article five, chapter three of this code, except that such candidates shall be nominated in accordance with the residency dispersal provisions specified in section four, article VI of the West Virginia Constitution and the additional residency dispersal provisions specified in subsection (e) hereof. Candidates for the Senate shall also be elected in accordance with the residency dispersal provisions specified in said section four, article VI of the West Virginia Constitution and the additional residency dispersal provisions specified in subsection (e) hereof. In furtherance of the foregoing provisions of this subsection (f), no person may file a certificate of candidacy for election from a senatorial district described and constituted in subsection (d) hereof if he resides in the same county and the same such senatorial district wherein also resides an incumbent senator, whether the senatorial district wherein such incumbent senator resides was described and constituted by chapter sixty-six, acts of the Legislature, one thousand nine hundred seventy-six, or was described and constituted in subsection (d) hereof. Any vacancy in a nomination shall be filled, any appointment to fill a vacancy in the Senate shall be made, and any candidates in an election to fill a vacancy in the Senate
shall be chosen, so as to be consistent with the residency dispersal provisions specified in section four, article VI of the West Virginia Constitution and the additional residency dispersal provisions specified in subsection (e) hereof.

(g) Regardless of the changes in senatorial district boundaries made by the provisions of subsection (d) hereof, all senators elected at the general election held in the year one thousand nine hundred seventy-eight and at the general election held in the year one thousand nine hundred eighty shall continue to hold their seats as members of the Senate for the term, and as representatives of the senatorial district, for which each thereof, respectively, was elected. Any appointment made or election held to fill a vacancy in the Senate shall be for the remainder of the term, and as a representative of the senatorial district, for which the vacating senator was elected or appointed, and any such election shall be held in the district as the same was described and constituted at the time the vacating senator was elected or appointed.

(h) Notwithstanding the provisions of sections five and seven, article one, chapter three of this code, if an election precinct of this state contains territory included within more than one senatorial district (other than a superimposed senatorial district), as such senatorial districts are described and constituted by subsection (d) hereof, it shall be the duty of the county commission of the county in which such precinct is located to alter the boundary lines of the county's election precincts prior to the twentieth day of April, one thousand nine hundred eighty-two, so that no election precinct contains territory which is included within more than one such senatorial district.

(i) The secretary of state may promulgate rules and regulations to implement the provisions of this section, including emergency rules and regulations promulgated pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

1 (a) This section shall be known and may be cited as "The House of Delegates Apportionment Act of 1982."

2 (b) As used in this section:

3 (1) "County" means the territory comprising a county of this state as it existed on the first day of January, one thousand nine hundred eighty, notwithstanding any boundary changes made subsequent thereto;

4 (2) "Enumeration district," "block," "block numbering area" and "census tract" mean those geographic areas as defined by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred eighty census of population and described on census maps prepared by the bureau of the census. Such maps are, at the time of this enactment, maintained by the bureau of the census and shall be filed in the office of the secretary of state by the clerk of the House of Delegates not later than the first day of July, one thousand nine hundred eighty-three;

5 (3) "Magisterial district" means the territory comprising a magisterial district of this state as it existed on the first day of January, one thousand nine hundred eighty, as defined in the official records of the county commissions of the several counties, notwithstanding any boundary changes made subsequent thereto.

6 (c) If an election precinct in this state, as it exists at the time of passage of this section, includes territory contained in more than one delegate district, as such delegate districts are established by subsection (d) of this section, it shall be the duty of the county commission of the county in which such precinct is located, prior to the first day of April, one thousand nine hundred eighty-two, to alter the boundary lines of its election precincts so that no precinct contains territory included in more than one delegate district.

7 (d) The House of Delegates shall be composed of one hundred members elected from the delegate districts hereinafter described:

8 (1) The county of Hancock (except for census tract two hundred one within the Clay magisterial district) shall constitute the first delegate district and shall elect two delegates;

9 (2) The county of Brooke, census tract two hundred one...
within the Clay magisterial district of the county of Hancock
and all of the Richland-Washington magisterial district of the
county of Ohio except for the portion contained within the
city of Wheeling shall constitute the second delegate district
and shall elect two delegates;
(3) That portion of the county of Ohio not contained
within the second delegate district and enumeration district
two hundred fifty of magisterial district one of the county of
Marshall shall constitute the third delegate district and shall
elect three delegates;
(4) The county of Marshall (except for enumeration
district two hundred fifty of magisterial district one) shall
constitute the fourth delegate district and shall elect two
delegates;
(5) The county of Wetzel (except for enumeration district
three hundred ninety-one of the Magnolia magisterial district)
shall constitute the fifth delegate district and shall elect one
delegate;
(6) The counties of Doddridge and Tyler, and enumeration
district three hundred ninety-one of the Magnolia magisterial
district of the county of Wetzel shall constitute the sixth
delegate district and shall elect one delegate;
(7) The counties of Pleasants and Ritchie shall constitute
the seventh delegate district and shall elect one delegate;
(8) The county of Wood and the county of Wirt shall
constitute the eighth delegate district and shall elect five
delegates;
(9) The counties of Braxton, Calhoun and Gilmer and the
county of Clay (except for the Union magisterial district and
enumeration district one hundred four of the Henry
magisterial district) shall constitute the ninth delegate district
and shall elect two delegates: Provided, That not more than
one delegate may be nominated, elected or appointed who is a
resident of any single county within the ninth delegate
district;
(10) The county of Roane and that portion of the county
of Clay not contained within the ninth delegate district shall
constitute the tenth delegate district and shall elect one
delegate;
(11) The Washington, Grant and Ripley magisterial
districts of the county of Jackson, enumeration districts four
hundred twenty-six and four hundred twenty-eight of the
Ravenswood magisterial district of the county of Jackson,
block numbers one hundred one, one hundred two, one
hundred three and one hundred four of block numbering area
nine thousand nine hundred one within the Ravenswood
magisterial district of the county of Jackson, and the Union
magisterial district of the county of Mason shall constitute the
eleventh delegate district and shall elect one delegate;
(12) The county of Putnam, the Carroll magisterial district
of the county of Lincoln and those portions of the counties of
Jackson and Mason not contained within the eleventh
delegate district shall constitute the twelfth delegate district
and shall elect four delegates: Provided, That not less than
one delegate may be nominated, elected or appointed who is a
resident of each of those portions of the counties of Mason
and Putnam within the twelfth delegate district;
(13) The county of Cabell and all of the Westmoreland
magisterial district of the county of Wayne except for census
tracts two hundred one and two hundred four shall constitute
the thirteenth delegate district and shall elect six delegates;
(14) The county of Wayne (except for the portions of the
Westmoreland magisterial district not contained within
census tracts two hundred one and two hundred four) shall
constitute the fourteenth delegate district and shall elect two
delegates;
(15) The county of Mingo shall constitute the fifteenth
delegate district and shall elect two delegates;
(16) The county of Logan, the county of Lincoln (except
for the Carroll magisterial district), the Washington
magisterial district of the county of Boone and all of the Scott
magisterial district of the county of Boone except for the
portion contained within the city of Madison shall constitute
the sixteenth delegate district and shall elect four delegates:
Provided, That not more than three delegates may be
nominated, elected or appointed who are residents of any
single county within the sixteenth delegate district;
(17) That portion of the county of Boone not contained
within the sixteenth delegate district shall constitute the
seventeenth delegate district and shall elect one delegate;
(18) The county of McDowell (except for enumeration
districts five hundred eighty-five, five hundred eighty-eight
and five hundred eighty-nine of the Browns Creek
magisterial district and enumeration districts five hundred
ninety, five hundred ninety-three and five hundred
ninety-four of the Sandy River magisterial district) shall
constitute the eighteenth delegate district and shall elect two
delegates;
(19) That portion of the county of McDowell not contained
within the eighteenth delegate district and the county of
Wyoming (except for the Barkers Ridge magisterial district)
shall constitute the nineteenth delegate district and shall
elect two delegates;
(20) The county of Mercer and that portion of the county of
Wyoming not contained within the nineteenth delegate
district shall constitute the twentieth delegate district and
shall elect four delegates;
(21) The county of Monroe, enumeration district two of the
New River magisterial district of the county of Summers and
counties nine, ten, eleven and twelve of the
Greenbrier River magisterial district of the county of
Summers shall constitute the twenty-first delegate district
and shall elect one delegate;
(22) The county of Raleigh and that portion of the county
of Summers not contained within the twenty-first delegate
district shall constitute the twenty-second delegate district
and shall elect five delegates: Provided, That not more than
four delegates may be nominated, elected or appointed who
are residents of any county within the twenty-second
delegate district;
(23) The county of Kanawha shall constitute the
twenty-third delegate district and shall elect twelve
delegates;
(24) The county of Fayette shall constitute the
twenty-fourth delegate district and shall elect three delegates;
(25) The county of Greenbrier shall constitute the
twenty-fifth delegate district and shall elect two delegates;
(26) The counties of Nicholas and Webster shall constitute
the twenty-sixth delegate district and shall elect two
delegates: Provided, That not less than one delegate may be
nominated, elected or appointed who is a resident of any
single county within the twenty-sixth delegate district;
(27) The counties of Pocahontas and Randolph shall
constitute the twenty-seventh delegate district and shall elect
two delegates;
(28) The county of Barbour and the county of Upshur shall
constitute the twenty-eighth delegate district and shall elect
two delegates: Provided, That not less than one delegate may
be nominated, elected or appointed who is a resident of any
single county within the twenty-eighth delegate district;

(29) The county of Lewis shall constitute the twenty-ninth delegate district and shall elect one delegate;

(30) The county of Harrison shall constitute the thirtieth delegate district and shall elect four delegates;

(31) The counties of Marion and Taylor shall constitute the thirty-first delegate district and shall elect four delegates: Provided, That not less than one delegate may be nominated, elected or appointed who is a resident of any single county within the thirty-first delegate district;

(32) The county of Monongalia shall constitute the thirty-second delegate district and shall elect four delegates;

(33) The counties of Preston and Tucker shall constitute the thirty-third delegate district and shall elect two delegates;

(34) The counties of Grant and Mineral shall constitute the thirty-fourth delegate district and shall elect two delegates: Provided, That not less than one delegate may be nominated, elected or appointed who is a resident of any single county within the thirty-fourth delegate district;

(35) The counties of Pendleton and Hardy and the Mill Creek magisterial district of the county of Hampshire shall constitute the thirty-fifth delegate district and shall elect one delegate;

(36) The county of Hampshire (except for the Mill Creek magisterial district), the Cacapon, Rock Gap and Timber Ridge magisterial districts of the county of Morgan and enumeration districts eighty and eighty-one of the Bath magisterial district of the county of Morgan shall constitute the thirty-sixth delegate district and shall elect one delegate;

(37) That portion of the county of Morgan not contained within the thirty-sixth delegate district, the Martinsburg magisterial district of the county of Berkeley, the Hedgesville magisterial district of the county of Berkeley (except for enumeration districts five hundred eighty-three and five hundred eighty-two) and block numbers two hundred three, two hundred four, two hundred five, two hundred six, two hundred seven, two hundred eight, two hundred nine, two hundred ten, two hundred eleven, two hundred twelve, two hundred eighteen and two hundred nineteen of block numbering area nine thousand nine hundred three within the Arden magisterial district of the county of Berkeley shall constitute the thirty-seventh delegate district and shall elect one delegate;
That portion of the county of Berkeley not contained within the thirty-seventh delegate district (except for the Falling Waters and Opequon magisterial districts) shall constitute the thirty-eighth delegate district and shall elect one delegate;

(39) The Opequon and Falling Waters magisterial districts of the county of Berkeley and the Shepherdstown and Middleway magisterial districts of the county of Jefferson shall constitute the thirty-ninth delegate district and shall elect one delegate; and

(40) The Charles Town, Kabletown and Harpers Ferry magisterial districts of the county of Jefferson shall constitute the fortieth delegate district and shall elect one delegate.

(e) Regardless of the changes in delegate district boundaries made by the provisions of subsection (d) of this section, the delegates elected at the general election held in the year one thousand nine hundred eighty shall continue to hold their offices as members of the House of Delegates for the term, and as representatives of the county or delegate district, for which each thereof, respectively, was elected. Any appointment made prior to the first day of December, one thousand nine hundred eighty-two, to fill a vacancy in the office of a member of the House of Delegates shall be made for the remainder of the term, and as representative of the county or delegate district, for which the vacating delegate was elected or appointed.

CHAPTER 100

(S. B. 22—By Mr. Tonkoевич and Mr. Tomblin)

[Passed March 1, 1982; in effect July 1, 1983. Disapproved by the Governor and repassed notwithstanding his objections.]

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 eleven; to amend and reenact sections ten and twenty-six, article two, chapter five-a of said code; and to amend and reenact section two, article two, chapter twelve of said code, all
relating to legislative appropriation of federal funds; declaring legislative findings and purpose; defining terms; requiring certain federal funds to be deposited in the state treasury and credited to special fund accounts upon receipt; requiring the governor to itemize in the state budget and the budget bill, by line item, separately, for each spending unit, the amount and purpose of all federal funds received or anticipated, with a reference to the account number, line item and amount of any state funds required for such purpose; requiring federal revenue sharing funds to be itemized in a separate section of the state budget and the budget bill devoted exclusively to such proposed appropriations; prohibiting the expenditure of certain federal funds without specific appropriations by the Legislature; allowing the governor, under specified circumstances, to authorize expenditure of certain federal funds, and to seek the recommendation of the legislative joint committee on government and finance; providing exclusions from this article for certain federal funds; providing that the provisions of this article prevail over any conflicting statutory provisions; specifying date that tentative budget be submitted to governor and copy to legislative auditor; providing copies of tentative budget, upon request, to members of the Legislature; and requiring agency requests to the federal government for personal services funds to include funds for the cost of fringe benefits related to such personal services.

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 eleven; that sections ten and twenty-six, article two, chapter five-a of said code be amended and reenacted; and that section two, article two, chapter twelve of said code be amended and reenacted, all to read as follows:

Chapter

4. The Legislature.

5A. Department of Finance and Administration.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.

§4-11-1. Legislative findings and purpose.

The Legislature finds and declares that in order to carry out its responsibility for the enactment of all appropriations needed for the operation of state government, the Legislature needs continuous and accurate accounts of the amounts and purposes of all federal funds being requested, received or expended by the various agencies and departments of the state. The Legislature further finds and declares that the increased availability of and reliance on federal financial assistance has a substantial impact upon the programs, priorities and fiscal affairs of the state. It is the purpose of this article to clarify and specify the role of the Legislature in appropriating federal funds received by the state and in prescribing, by general law, the required form and detail of the itemization and classification of proposed appropriations to assure that state purposes are served and legislative priorities are adhered to by the acceptance and use of such funds.

§4-11-2. Definitions.

(1) "Federal funds" means any financial assistance made to a spending unit by the United States government, whether a loan, grant, subsidy, augmentation, reimbursement or any other form of such assistance, including "federal-matching funds";

(2) "Federal-matching funds" means federal funds of a specified amount or proportion for which a specified outlay of state contributions, including funds, property or
services, are required as a condition for receipt or expend-
iture;

(3) “Spending unit” means the state of West Virginia
and all agencies, offices, departments, divisions, boards,
commissions, councils, committees or other entities of the
state government for which an appropriation is requested
or to which an appropriation is made by the Legislature.
“Spending Unit” does not mean any county, city, town-
ship, public service district or other political subdivision
of the state; and

(4) “State-matching funds” means state contributions,
including funds, property or services that are required by
the federal government, by law or regulation, as a condi-
tion for receipt or expenditure of federal funds.

§4-11-3. Receipt of federal funds and required deposit in state
treasury.

Unless contrary to federal law, all federal funds re-
ceived by a spending unit shall be deposited in and
credited to special fund accounts as provided by section
two, article two, chapter twelve of this code and shall be
available for appropriation by the Legislature as part of
the state budget.

§4-11-4. Inclusion of federal funds in state budget and the bud-
get bill.

Pursuant to article one-a, chapter five, and chapter
five-a of this code, the governor shall itemize in the state
budget and in the budget bill, on a line-item basis,
separately, for each spending unit, the amount and pur-
pose of all federal funds received or anticipated for
expenditure, with a reference to the account number, line
item and amount of any state funds required for such
purpose: Provided, That all federal revenue sharing funds
shall be so itemized in a separate section of the state
budget and the budget bill devoted exclusively to pro-
posed appropriations from the revenue sharing trust fund.

§4-11-5. Legislative appropriation authority.

(a) No spending unit may make expenditures of any
federal funds, whether such funds are advanced prior to expenditure or as reimbursement, unless such expenditures are made pursuant to specific appropriations by the Legislature, except as may be hereinafter provided.

(b) To the extent not precluded by the terms and conditions under which federal funds are made available to the spending unit by the United States government, the spending unit shall use federal funds in accordance with any purposes, policies or priorities the Legislature may have established for the activity being assisted or for the use of state, federal and other fiscal resources in a particular fiscal year.

(c) If the federal funds received by a spending unit for a specific purpose are greater than the amount of such funds contained in the appropriation by the Legislature for such purpose, the total appropriation of federal funds and any state-matching funds for such purpose shall remain at the level appropriated, except as hereinafter provided.

(d) If federal funds become available to the spending unit for expenditure while the Legislature is not in session and the availability of such funds could not reasonably have been anticipated and included in the budget approved by the Legislature for the next fiscal year, the treasurer may accept such funds on behalf of the spending unit and the governor may authorize, in writing, the expenditure of such funds by the spending unit during that fiscal year as authorized by federal law and pursuant to the provisions of article two of chapter five-a of the code which permits expenditure of amounts in excess of the appropriation upon the filing of a proper expenditure schedule: Provided, That the governor may not authorize the expenditure of such funds received for the creation of a new program or for a significant alteration of an existing program. Should a question arise concerning whether such expenditures would constitute a new program or significant alteration of an existing program, while the Legislature is not in session, the governor shall seek the recommendation of the joint committee on government
and finance of the Legislature. Upon application to the federal government for such funds and upon receipt of such funds, the governor shall submit to the legislative auditor two copies of a statement:

(1) Describing the proposed expenditure of such funds in the same manner as it would be described in the state budget; and

(2) Explaining why the availability of such federal funds and why the necessity of their expenditure could not have been anticipated in time for such expenditures to have been approved as part of the adopted budget for that particular fiscal year.

§4-11-6. Exclusions.

The following are excluded from the provisions of this article:

(1) Federal funds received by state institutions of higher education or by students or faculty members of such institutions for instructional or research purposes and federal funds received for student scholarships or grants-in-aid;

(2) Federal nondiscretionary pass-through funds which are earmarked in specified amounts or proportions for transmittal to local political subdivisions or to designated classes of organizations and individuals which do not require state-matching funds and do not permit discretion in their distribution by the receiving state spending unit;

(3) Federal funds made available to the state for costs and damages resulting from natural disasters, civil disobedience or other occurrences declared by the governor as a state of emergency; and

(4) All federal funds received by the West Virginia department of highways or the West Virginia commissioner of highways.

§4-11-7. Conflict with other statutory provisions.

If there is any conflict between the provisions of this
article and any other provision of this code relating to
receiving or expending federal funds, the provisions of
this article shall govern and control.

CHAPTER 5A. DEPARTMENT OF FINANCE AND
ADMINISTRATION.

ARTICLE 2. BUDGET DIVISION.

§5A-2-10. Preparation of tentative budget and submission to governor; copies
to Legislature.
§5A-2-26. Approval by commissioner of requests for federal aid; copies to
legislative auditor; consolidated report of federal funds.

§5A-2-10. Preparation of tentative budget and submission to
governor; copies to Legislature.

The commissioner shall prepare for the consideration
of the governor a tentative budget for the fiscal year
next ensuing. The budget shall state actual receipts
and expenditures for the fiscal year next preceding,
estimated receipts and expenditures for the current
fiscal year, recommended expenditures for the current
fiscal year as shown in the legislative digest, and it shall
state also the requested amounts or estimates for the
fiscal year next ensuing with respect to:

(1) Appropriations requested by each spending unit
and requested general appropriations;

(2) The amount of the total of each appropriation to
be paid out of collections;

(3) Amounts and purposes of appropriations requested
other than for spending units of the state;

(4) Revenue of each of the funds of the state;

(5) A summary statement of requests and revenues
showing the amount of an anticipated surplus or deficit;

(6) Balances carried forward to the first day of July,
from the fiscal year next preceding on all reappropriated
accounts from general revenue fund and general school
fund;

(7) Percentage of increase or decrease by comparison
of recommended appropriation for next ensuing year
with current fiscal year.
On or before the fifth day of December, the commissioner shall submit the tentative budgets to the governor. The commissioner shall convey to the governor all explanatory and justification statements and statements of personnel requirements of spending units as reported and filed in his office, together with the certification of the state treasurer verifying the condition of the state revenues and the several funds of the state as required to be provided to the commissioner under the provisions of section three, article four, chapter twelve of this code.

At the time the commissioner submits the tentative budget to the governor, he shall also submit copies thereof to the president of the Senate, the speaker of the House of Delegates, the legislative auditor and to any member of the Legislature who shall request a copy. At any time thereafter that additional data supplementary to the tentative budget is received by the commissioner, which data or change is not an integral part of the preparation of the proposed budget of the governor, the commissioner shall submit a copy thereof to the legislative auditor.

§5A-2-26. Approval by commissioner of requests for federal aid; copies to legislative auditor; consolidated report of federal funds.

Every agency of the state government when making requests or preparing budgets to be submitted to the federal government for funds, equipment, material or services, the grant or allocation of which is conditioned upon the use of state matching funds, shall have such request or budget approved in writing by the commissioner before submitting it to the proper federal authority. At the time such agency submits such a request or budget to the commissioner for his approval, it shall send a copy thereof to the legislative auditor. When such federal authority has approved the request or budget, the agency of the state government shall resubmit it to the commissioner for recording before any allotment or encumbrance of the federal funds can be made and the
commissioner shall send a copy of the federally approved
request or budget to the legislative auditor. Whenever
any agency of the state government shall receive from
any agency of the federal government a grant oralloca-
tion of funds which do not require state matching, the
state agency shall report to the commissioner and the
legislative auditor for their information the amount of the
federal funds so granted or allocated.

Unless contrary to federal law, any agency of state
government, when making requests or preparing budgets
to be submitted to the federal government for funds for
personal services, shall include in such request or budget
the amount of funds necessary to pay for the cost of any
fringe benefits related to such personal service. For the
purposes of this section, "fringe benefits" means any
employment benefit granted by the state which involves
state funds, including, but not limited to, contributions to
insurance, retirement and social security, and which does
not affect the basic rate of pay of an employee.

In addition to the other requirements of this section,
the commissioner shall, as soon as possible after the end of
each fiscal year but no later than the first day of October
of each year, submit to the governor and the legislative
auditor a consolidated report which shall contain a de-
tailed itemization of all federal funds received by the
state during the preceding and current fiscal years, as
well as those scheduled or anticipated to be received
during the next ensuing fiscal year. Such itemization shall
show: (a) Each spending unit which has received or is
scheduled or expected to receive federal funds in either of
such fiscal years, (b) the amount of each separate grant or
distribution received or to be received, (c) a brief de-
scription of the purpose of every such grant or other dis-
tribution, with the name of the federal agency, bureau or
department making such grant or distribution: Provided,
That it shall not be necessary to include in such report an
itemization of federal revenue sharing funds deposited in
and appropriated from the revenue sharing trust fund, or
federal funds received for the benefit of the department of
highways and the state road fund.
The commissioner is authorized and empowered to obtain from the spending units any and all information necessary to prepare such report.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

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.

All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The treasurer shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code governing the procedure for such deposits. When so paid, such moneys shall be credited to the state fund and treated by the auditor and treasurer as part of the general revenue of the state: Provided, That all moneys received out of appropriations made by the Congress of the United States shall be carried in special fund accounts, apart from the general revenues of the state, in the state treasury and all such moneys shall not be used for any purpose whatsoever unless and until authorized and directed by the Legislature, excepting the following funds which shall be carried in separate accounts:

(a) All funds excluded by the provisions of section six, article eleven, chapter four of this code;

(b) All funds derived from the sale of farm and dairy products from farms operated by any agency of state government other than the farm management commission;

(c) All endowment funds, bequests, donations, executive emergency funds, and death and disability funds;
(d) All fees and funds collected at state educational institutions for student activities;

(e) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(f) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(g) All insurance collected on account of losses by fire and refunds;

(h) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(i) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the public service commission for the investigation and supervision of applications and all funds and moneys payable to or received by the natural resources commission of West Virginia;

(j) All moneys collected or received under any act of the Legislature providing that funds collected or received thereunder shall be used for specific purposes.

All moneys, excepted as aforesaid, shall be paid into the state treasury in the same manner as collections not so excepted, and shall be carried in separate accounts to be used and expended only for the purposes for which the same are authorized to be collected by law. The gross amount collected in all cases shall be paid into the state treasury, and commissions, costs and expenses of collection authorized by general law to be paid out of the gross collection are hereby authorized to be paid out of the moneys collected and paid into the state treasury in the same manner as other payments are made from the state treasury.

The official or employee making such deposits in the
state treasury shall prepare such deposit lists in such
manner and upon such report forms as may be prescribed
by the treasurer. The original of this report shall accom-
pany the deposit to the treasurer’s office. Certified or
receipted copies shall be immediately forwarded by the
state treasurer to the state auditor and to the commis-
sioner of finance and administration, and a copy shall be
kept by the official or employee making the report and
shall become a part of his permanent record.

CHAPTER 101
(Com. Sub. for H. B. 1340—Mr. Schifano and Mrs. Theiling)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia medical practice act; appointment of members to the West Virginia board of medicine; providing for appointment of one Type A physician assistant member and one additional lay member to the board of medicine.

Be it enacted by the Legislature of West Virginia:

That section five, 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. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-5. West Virginia board of medicine created; transfer of powers and duties from medical licensing board; appointment and terms of members; vacancies; removal.

1 There is hereby created a medical licensing board to be
2 known as the “West Virginia Board of Medicine.” The West
3 Virginia board of medicine shall assume, carry on and succeed
4 to all the duties, rights, powers, obligations and liabilities
5 heretofore belonging to or exercised by the medical licensing
6 board of West Virginia. All the rules and regulations, orders,
rulings, licenses, certificates, permits and other acts and undertakings of the medical licensing board of West Virginia as heretofore constituted shall continue as those of the West Virginia board of medicine until they expire or are amended, altered or revoked. The board shall be the sole authority for the issuance of licenses to practice medicine and surgery and to practice podiatry and certificates for physician assistants in this state and shall be a regulatory and disciplinary body for the practice of medicine and surgery and the practice of podiatry and for physician assistants in this state.

The board shall consist of fifteen members. One member shall be the state director of health ex officio, with the right to vote as a member of the board. The other fourteen members shall be appointed by the governor, with the advice and consent of the Senate. Eight of the members shall be appointed from among individuals holding the degree of doctor of medicine and two shall hold the degree of doctor of podiatric medicine. One member shall be an individual certified by the board as a Type A physician assistant. Each of these members must be duly licensed or certified to practice his or her profession in this state on the date of appointment and must have been licensed or certified and actively practicing that profession for at least five years immediately preceding the date of appointment. Three lay members shall be appointed to represent health care consumers. Neither the lay members nor any person of the lay members' immediate families shall be a provider of or be employed by a provider of health care services. The state director of health's term shall continue for the period that he or she holds office as state director of health. Each other member of the board shall be appointed to serve a term of five years: Provided, That the members of the medical licensing board or board of medicine holding appointments on the effective date of this section shall continue to serve as members of the board of medicine until the expiration of their term unless sooner removed. Each term shall begin on the first day of October of the applicable year, and a member may not be appointed to more than two consecutive full terms on the board.

Not more than four physicians, one podiatrist and two lay
members appointed by the governor as members of the board shall belong to the same political party. The Type A physician assistant member may not belong to the same political party to which a majority of the lay members belong. A person is not eligible for membership on the board who is a member of any political party executive committee or, with the exception of the state director of health, who holds any public office or public employment under the federal government or under the government of this state or any political subdivision thereof or who is an appointee or employee of the state board of health.

In making appointments to the board, the governor shall, so far as practicable, select the members from different geographical sections of the state. When a vacancy on the board occurs and less than one year remains in the unexpired term, the appointee shall be eligible to serve the remainder of the unexpired term and two consecutive full terms on the board.

No member may be removed from office except for official misconduct, incompetence, neglect of duty or gross immorality: Provided, That the expiration or revocation of the professional license or certification of a member of the board shall be cause for removal.

CHAPTER 102
(Com. Sub. for S. B. 143—By Mrs. Spears)

[Passed February 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one of said chapter; and to amend and reenact article one-e of said chapter, all relating generally to the military forces of the state; providing for a code of military justice with respect thereto; defining certain terms and phrases with respect thereto; providing for the establishment of trials by courts-martial; establishing the jurisdiction of said courts-martial; providing for the dismissal of commissioned officers with approval of the governor; establishing the
territorial applicability of the provisions of said article one-e; providing for the appointment of state judge advocate officers and assistants and defining the duties of such officers and assistants; providing for the apprehension, arrest and custody of persons subject to and in violation of said military code; establishing the authority of civil officers to enforce said code; providing for the imposition of restraint based upon probable cause of persons subject to said code; providing for the issuance of arrest warrants to police officers and establishing procedures for admission to bail of persons arrested pursuant thereto; providing for the confinement of violators in civilian jails; requiring reports upon receiving of prisoners subject to said code; providing for the deliverance of such persons to civilian authorities in certain cases; establishing disciplinary punishment for minor offenses committed by persons subject to said code without intervention of court-martial and limitations and appeals relating thereto; providing for the classification of courts-martial; establishing the jurisdiction of courts-martial generally; providing for penalties and limitations of special courts-martial and the limitations thereon and the penalties to be imposed thereby; establishing the jurisdiction of summary courts-martial and the limitations thereon and penalties to be imposed thereby; providing for a written record of bad conduct discharge proceedings; requiring the confinement of persons subject to this code in lieu of fines and limitations with respect thereto; authorizing the convening of general, special and summary courts-martial and the limitations with respect thereto and the persons empowered to convene said courts-martial; providing for persons to serve on courts-martial generally and limitations thereon; providing for the appointment of a military judge to preside over special or general courts-martial in lieu of a hearing panel and eligibility therefor and limitations thereon; providing for the employment or appointment of reporters and interpreters; prohibiting the absence of a member of a general or special courts-martial without excuse; providing for the addition of new members and limitations thereon; requiring the specification of charges and the disposition thereof; prohibiting compulsory self-incrimination; providing for the investigation of charges or specifications prior to convening of a general court-martial; providing for and establishing the
rights of accused violators of said code; providing for the timely forwarding of charges to persons exercising general courts-martial jurisdiction and the timely service of charges upon the accused; requiring the establishment of certain trial procedures by the governor; prohibiting the wrongful influencing of the court; the duties of trial and defense counsel in any general or special courts-martial; governing courts-martial sessions generally and continuances thereof and limitations thereon; providing for challenges to military judges and members of general or special courts-martial for cause and providing for one peremptory challenge; establishing a statute of limitations with respect to certain offenses; providing for the attachment of jeopardy; establishing the right of the accused to obtain witnesses and other evidence and the forms of various pleas and limitations with respect thereto; providing for sanctions for refusal to appear and testify; establishing contempt of military courts by military persons and the penalty therefor; allowing the taking of depositions and notice therefor and admissibility into evidence and limitations thereon; providing for admissibility of certain records; establishing voting procedures of courts-martial; reserving rulings on questions and interlocutory matters; providing for instructions to members of courts-martial panel; providing for proceedings before military judge only; providing for conviction, sentences and other matters relating thereto; requiring courts to announce findings and sentences; requiring records of courts-martial proceedings and furnishing such records to accused in certain cases; prohibiting cruel and unusual punishment; establishing maximum limits of punishment; establishing effective date of sentences and places of confinement; providing for execution of confinement; authorizing hard labor; establishing duties of county jail officials with respect to military prisoners; providing for review of courts-martial proceedings; defining errors of law and lesser included offenses; providing reconsideration, revision and rehearing of courts-martial findings; requiring approval of sentences by convening authority; establishing review by board of review; providing for appellate counsel; defining execution, suspension and vacation of sentence; providing for petition for new trial and the remission and suspension of sentences as a result and limitations with respect thereto; establishing restoration of rights, privileges and property of persons convicted and
limitations thereon; defining finality of proceedings, findings and sentences; defining principals and accessories after the fact; providing for the conviction for lesser included offenses; prescribing certain other offenses and the penalties therefor; providing for the establishment of courts of inquiry and the power to convene the same; establishing the composition of such courts and procedures relating thereto; providing for examination and availability of the military code to military personnel; requiring complaints of and redress of wrongs and redress of injuries to property; disposing of fines and penalties; establishing liabilities of public officers for nonexecution of process and penalties therefor; allowing compensation for court members and immunity for actions of a military court; providing reemployment rights for guard members; providing for delegation of authority by the governor; and establishing uniformity of interpretation; and severability of provisions of said article one-e.

Be it enacted by the Legislature of West Virginia:
That section fifteen, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article one of said chapter be amended and reenacted; and that article one-e of said chapter be amended and reenacted, all to read as follows:

Article
  1. Military Forces of the State.
  1E. Code of Military Justice.

ARTICLE 1. MILITARY FORCES OF THE STATE.

§15-1-1. Definitions.
  1 When used in articles one, one-a, one-b, one-c, one-d, one-f and one-g of this chapter, unless a different meaning is plainly required by the context:
  4 (a) The term "military forces of the state" shall mean the organized militia, the state retired list, the honorary militia and the state guard, and all other components of the militia of the state which may hereafter be organized.
  8 (b) The term "organized militia" shall mean the West Virginia national guard, including the army national guard, the air national guard and the inactive national guard, and shall be deemed to include any unit, component, element, headquarters, staff or cadre thereof, as well as any member or members.
(c) "Military personnel of the national guard" shall mean all the members of the organized militia.

(d) "Military" shall mean army or land, air or air force, navy or naval.

(e) The term "service of the state" or "active service of the state" shall mean active military duty in other than a training status in or with a force of the organized militia or with the adjutant general's department, upon orders of the governor.

(f) The term "state duty" shall mean duty in a training status or other duty in the interest of the state and the organized militia.

(g) The term "service of the United States" or "active service of the United States" shall mean active military duty in the armed forces of the United States except active duty for training purposes.

(h) The term "officer" or "commissioned officer" shall be deemed to include warrant officers.

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PART I. GENERAL PROVISIONS.

1 This article shall be known and may be cited as the “West Virginia Code of Military Justice.”

1 The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:
4 (a) “Accuser.” A person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another or any person who has an interest other than an official interest in the prosecution of the accused.
8 (b) “Active state duty.” Full-time duty in the active military service of the state under an order of the governor, or by a superior commissioned officer pursuant to law. It includes travel to and from such duty.
12 (c) “Adjutant general.” The adjutant general of the state of West Virginia.
14 (d) "Convening authority." Includes, in addition to the 
15 person who convened the court, a commissioned officer 
16 commanding for the time being, or a successor in command. 
17 (e) "Duty status." Includes any periods of drill, annual 
18 field training, active state duty and such other training, and 
19 service as may be required under state or federal laws, 
20 regulations or orders, and includes travel to and from such 
21 duty. 
22 (f) "Enemy." Includes, for the purposes of the punitive 
23 provisions of this article, not only the organized forces of a 
24 hostile nation in time of war but also any hostile body the 
25 state military forces may be opposing, such as looters, a riot, a 
26 rebellious mob or band of renegades or outlaws. 
27 (g) "Enlisted person." A person in an enlisted grade. 
28 (h) "Federal service." Periods of active duty other than 
29 active state duty, but excludes active duty for training, active 
30 duty for periods of less than thirty days, and active duty for 
31 the purpose of attending service schools. 
32 (i) "Grade." A step or degree, in a graduated scale of office 
33 or military rank, that is established and designated as a grade 
34 by law or regulation. 
35 (j) "May." Is used in a permissive sense. The words "no 
36 person may . . ." means that no person is required, authorized 
37 or permitted to do the act prescribed. 
38 (k) "Military." Any or all of the armed forces. 
39 (l) "Military court." A court-martial or a court of inquiry. 
40 (m) "Military judge." An official of a general or special 
41 court-martial appointed in accordance with section 
42 twenty-nine of this article. 
43 (n) "Officer." Commissioned or warrant officer. 
44 (o) "Rank." The order of precedence among members of 
45 the state military forces. 
46 (p) "State judge advocate." The commissioned officer 
47 responsible for supervising the administration of the military 
48 justice in the state military forces. He shall be the military 
49 staff judge advocate to the governor. 
50 (q) "Superior commissioned officer." A commissioned 
51 officer superior in rank and command. 

§15-1E-3. Persons subject to article. 
1 This article applies to all members of the state military 
2 forces who are not in federal service.
§15-1E-4. Jurisdiction to try certain personnel.

(a) Each person subject to this article discharged from the state military forces who is later charged with having fraudulently obtained his discharge shall be, subject to section forty-six of this article, subject to trial by court-martial on said charge and shall after apprehension be subject to this article while in the custody of the military for such trial. Upon conviction of said charge he shall be subject to trial by court-martial for all offenses under this article committed before the fraudulent discharge.

(b) No person subject to this article who has deserted from the state military forces shall be relieved from amenability to the jurisdiction of this article by virtue of a separation from any subsequent period of service.

§15-1E-5. Dismissal of commissioned officer.

(a) Any commissioned officer, subject to this article dismissed by order of the governor, may make a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed. In such event, the governor, as soon as practicable, shall convene a general court-martial to try such officer on the charges on which he was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on such charge, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(b) If the governor fails to convene a general court-martial within six months from the presentation of an application for trial under this section, the adjutant general shall substitute for the dismissed officer a form of discharge authorized for administrative issue.

§15-1E-6. Territorial applicability.

(a) This article applies throughout this state. It also applies to all persons otherwise subject to the article while they are serving outside this state, and while they are going to and returning from such service outside this state, in the same
manner and to the same extent as if they were serving inside this state.
(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside this state with the same jurisdiction and powers as to persons subject to the article as if the proceedings were held inside this state and persons subject to this article accused of committing offenses outside this state shall be subject to trial and punishment either inside or outside this state.

(a) The adjutant general shall appoint a judge advocate officer of the state military forces as state judge advocate. To be eligible for appointment, such officer shall have been a member of the bar of the supreme court of appeals of West Virginia for at least five years, and shall have satisfactorily completed all educational requirements for active military service as a field grade judge advocate general corps officer.

(b) The adjutant general may appoint as many assistant state judge advocates as he considers necessary. To be eligible for appointment, assistant state judge advocates must be judge advocate officers of the state military forces and members of the bar of the supreme court of appeals of West Virginia.

(c) The state judge advocate or his assistants shall make inspections in the field in supervision of the administration of military justice.

(d) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officer in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the state judge advocate.

(e) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.
PART II. APPEHENSION AND RESTRAINT.

1 (a) Apprehension is the taking of a person subject to this article into custody.
2 (b) Any person authorized by this article, or by regulations issued under it, may apprehend persons subject to this article upon reasonable belief that an offense under this article has been committed and that the person apprehended committed it.
3 (c) Officers, petty officers and noncommissioned officers have authority to quell quarrels, frays and disorders among persons subject to this article and to apprehend persons subject to this article who take part therein.

1 Any civil officer having authority to apprehend offenders under the law of the United States or of a state, territory, commonwealth, or possession, or of the District of Columbia, or any military officer subject to this article who has been authorized by the governor by regulations may summarily apprehend any person subject to this article absent without leave from the state military forces and deliver him into the custody of the state military forces.

§15-1E-10. Imposition of restraint.
1 (a) Arrest is the restraint of a person subject to this article by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits.
2 Confineinent is the physical restraint of a person subject to this article.
3 (b) An enlisted person subject to this article may be ordered into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this article or through any person authorized by this article to apprehend persons. A commanding officer may authorize officers, petty officers or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.
4 (c) An officer subject to this article may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons
apprehended or into arrest or confinement may not be delegated.

(d) No person subject to this article may be ordered apprehended or into arrest or confinement except upon probable cause and written record of the facts and circumstances upon which probable cause was made shall be recorded.

(e) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.


(a) Any person subject to this article charged with an offense under this article may be ordered into arrest or confinement. When any person subject to this article is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused, to try him, or to dismiss the charges and release him.

(b) The convening authority of any court-martial shall have the power to issue warrants of apprehension directed to the sheriff or police officer within the proper county to apprehend persons subject to this article charged with an offense under this article and to deliver such persons into the custody of the state military forces.

(c) In cases where the unit of which the accused is a member is not in a status of active state duty or engaged in annual field training, such accused, if apprehended or ordered into confinement prior to or during trial by a military court, may be admitted to bail by the officer exercising special court-martial jurisdiction over him or by a superior commanding officer, or the adjutant general.


Persons subject to this article confined other than in a military installation, whether before, during or after trial by a military court, shall be confined in municipal, county or state places of confinement.


(a) No provost marshal, commander of a guard, warden, keeper or officer of a municipal, county or state place of confinement may refuse to receive or keep any prisoner subject to this article, committed to his charge, when the

No person subject to this article, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to ensure his presence: Provided, That such persons may be subject to the same treatment and discipline as persons similarly confined under the authority of the state or any political subdivision thereof.

§15-lE-15. Delivery of offenders to civil authorities.

(a) Under such regulations as may be prescribed under this article, a person subject to this article on active state duty, accused of an offense against civil authority, may be delivered, upon request of such civil authority, to such civil authority for trial.

(b) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial. The offender, after having answered to the civil authorities for his offense, shall, upon the request of competent military authority, be returned to military custody for the completion of such sentence of the court-martial.

PART III. NONJUDICIAL PUNISHMENT.


(a) Under such regulations as the governor may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) Upon an officer of his command:
(i) Withholding of privileges for not more than two consecutive weeks;
(ii) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or
(iii) If imposed by the adjutant general, the commanding officer of a division or a wing or a separate brigade or a group or a similar organization, a fine or forfeiture of pay and allowances of not more than one hundred fifty dollars.

(2) Upon other military personnel of his command:
(i) Withholding of privileges for not more than two consecutive weeks;
(ii) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;
(iii) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included;
(iv) Reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command; or
(v) If imposed by an officer exercising special court-martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than fifty dollars.

(b) The governor may, by regulation, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

(c) A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided. The officer who imposes the punishment, his successor in command, and superior authority, may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected.

(d) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section. The fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in
determining the measure of punishment to be adjudged in
the event of a finding of guilty.

(e) Whenever a punishment of forfeiture of pay and
allowances is imposed under this section, the forfeiture may
apply to pay or allowances accruing on or after the date that
punishment is imposed and to any pay and allowances
accrued before that date.

(f) Punishment may not be imposed upon any member of
the state military forces under this section if the member has,
before the imposition of such punishment, demanded trial by
court-martial in lieu of such punishment.

PART IV. COURTS-MARTIAL JURISDICTION.

§15-1E-17. Courts-martial classified.
1 The three kinds of courts-martial in the state military forces
2 are:
3 (1) General courts-martial, consisting of:
4 (i) A military judge and not less than five members; or
5 (ii) Only a military judge, if before the court is assembled
6 the accused, knowing the identity of the military judge and
7 after consultation with defense counsel, requests in writing a
8 court composed only of a military judge and the military
9 judge approves.
10 (2) Special courts-martial, consisting of:
11 (i) Not less than three members;
12 (ii) A military judge and not less than three members; or
13 (iii) Only a military judge, if one has been detailed to the
14 court, and the accused under the same conditions as those
15 prescribed in paragraph (ii), subdivision (1) so requests.
16 (3) Summary courts-martial, consisting of one
17 commissioned officer.

1 The army national guard and the air force national guard
2 each have court-martial jurisdiction over all persons subject
3 to this article. The exercise of jurisdiction by the army
4 national guard over air force personnel, or the air force
5 national guard over army personnel shall be in accordance
6 with regulations prescribed by the governor.

1 Subject to section eighteen of this article, general
2 courts-martial have jurisdiction to try persons subject to this
3 article for any offense made punishable by this article and
may, under such limitations as the governor may prescribe,
adjudge any of the following punishments:
(1) A fine of not more than two hundred dollars.
(2) Forfeiture of pay and allowances for a period not
exceeding six months.
(3) A reprimand.
(4) Dismissal, dishonorable discharge or bad conduct
discharge.
(5) Reduction of a noncommissioned officer to any lower
enlisted grade.
(6) Any combination of these punishments.

Subject to section eighteen of this article, special
courts-martial shall have jurisdiction to try persons subject to
this article, except commissioned officers for any offense
made punishable by this article and may, under such
limitations as the governor may prescribe, adjudge any of the
following punishments:
(1) A fine of not more than one hundred dollars.
(2) Forfeiture of pay and allowances for a period not
exceeding three months.
(3) A reprimand.
(4) Reduction of a noncommissioned officer to any lower
enlisted grade.
(5) A bad conduct discharge.
(6) Any combination of these punishments.

(a) Subject to section eighteen of this article, summary
courts-martial shall have jurisdiction to try enlisted persons
subject to this article for any offense made punishable by this
article and may, under such limitations as the governor may
prescribe, adjudge any of the following punishments:
(1) A fine of not more than twenty-five dollars for a single
offense.
(2) Forfeiture of pay and allowances for a period not
exceeding one month.
(3) Reduction to the next lower grade.
(b) No person with respect to whom summary
courts-martial have jurisdiction may be brought to trial
before a summary court-martial if he objects thereto. If
objection to trial by summary court-martial is made by an
§15-1E-22. Sentences of dismissal, dishonorable discharge or bad conduct to be approved by the governor.
1 In the state military forces, no sentence of dismissal, dishonorable discharge, or bad conduct discharge shall be executed until it is approved by the governor.

§15-1E-23. Record of bad conduct discharge proceedings.
1 A bad conduct discharge may not be adjudged by any general or special court-martial unless a complete written record of the proceedings and testimony before the court has been made.

1 In the state military forces, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine.

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL.

§15-1E-25. Who may convene general courts-martial.
1 (a) General courts-martial may be convened by any of the following:
2 (1) The governor.
3 (2) The adjutant general.
4 (3) The commanding officer of a division, a separate brigade, or a separate wing.
5 (4) Any other commanding officer in any of the state military forces when empowered by the governor.
6 (b) When any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed desirable by such authority.

§15-1E-26. Who may convene special courts-martial.
1 In the state military forces any person authorized to convene a general court-martial, the commanding officer of a garrison, fort, post, camp, station, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, separate battalion, separate squadron, or other detached command, may convene special courts-martial. When any such officer is an accuser, the court shall be convened by superior competent authority and may,
in any case, be convened by such authority when deemed advisable by him.

1 (a) In the state military forces any person authorized to convene a general or special court-martial, the commanding officer of a garrison, fort, post, camp, station, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, separate battalion, separate squadron, or other detached command, may convene a summary court-martial.
2 (b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

1 (a) Any commissioned officer of the state military forces is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.
2 (b) Any warrant officer of the state military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.
3 (c) (1) Any enlisted person of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trial. He shall serve as a member of a court only if, before the convening of the court, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial, the membership of which does not include enlisted persons in a number comprising at least one third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a
detailed written statement, to be appended to the record,
stating why they could not be obtained.

(2) In this subsection, the word "unit" means any
regularly organized body of the state military forces not larger
in size than a company, or a corresponding body.

(d) (1) No person subject to this article may be tried by a
court-martial any member of which is junior to him in rank or
grade.

(2) When convening a court-martial, the convening
authority shall appoint as members thereof such members as,
in his opinion, are best qualified for the duty by reason of age,
education, training, experience, length of service, and judicial
temperament. No member is eligible to serve as a member of
a general or special court-martial when he is the accuser or a
witness for the prosecution or has acted as investigating
officer or as counsel in the same case.

§15-1E-29. Military judge of a general or special court-martial.

(a) The authority convening a general or special
court-martial shall appoint as military judge thereof a
commissioned officer who is a member of the bar of the
supreme court of appeals of West Virginia, and who is
certified as qualified for such duty by the state judge
advocate. No person shall be eligible to act as military judge
in a case when he is the accuser or a witness for the
prosecution or has acted as investigating officer or as counsel
in the same case.

(b) The military judge may not consult with the members
of the court, other than on the form of the findings as
provided in section fifty-four of this article, except in the
presence of the accused, trial counsel and defense counsel.
He shall not vote with the members of the court.

§15-1E-30. Appointment of trial counsel and defense counsel.

(a) For each general and special court-martial the
authority convening the court shall appoint trial counsel and
defense counsel, and such assistants as he considers
appropriate. No person who has acted as investigating officer,
military judge or court member in any case shall act
subsequently as trial counsel, assistant trial counsel, or unless
expressly requested by the accused, as defense counsel or
assistant defense counsel in the same case. No person who
has acted for the prosecution shall act later in the same case
for the defense, nor shall any person who has acted for the defense act later in the same case for the prosecution.

(b) Any person who is appointed trial counsel or defense counsel in the case of a general or a special court-martial:

(1) Shall be a person who is a member of the bar of the supreme court of appeals of West Virginia.

(2) Shall be certified as competent to perform such duties by the state judge advocate.

§15-1E-31. Appointment or employment of reporters and interpreters.

Under such regulations as the governor may prescribe, the convening authority of a general or special court-martial or court of inquiry shall appoint or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. Under like regulations the convening authority of a military court may appoint or employ interpreters who shall interpret for the court.

§15-1E-32. Absent and additional members.

(a) No member of a general or special court-martial shall be absent or excused after the court has been assembled for the trial of the accused, except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When such new members have been sworn, the trial may proceed after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial is reduced below three members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. When such new members have been sworn, the trial shall proceed with the new members present as if no evidence has previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the member of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.
§15-1E-33. Charges and specifications.

(a) Charges and specifications shall be signed by a person subject to this article under oath before a person authorized by this part to administer oaths and shall state:

1. That the signer has personal knowledge of, or has investigated, the matters set forth therein.
2. That they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline. The person accused shall be informed of the charges against him as soon as practicable.

§15-1E-34. Compulsory self-incrimination prohibited.

(a) No person subject to this article shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this article shall interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and fully advising him of his right to be represented by counsel, that he does not have to make any statement regarding the offense of which he is accused or suspected, and that any statement made by him can and will be used as evidence against him in a trial by court-martial, as well as other constitutional safeguards provided for an accused or a person suspected of an offense.

(c) No person subject to this article shall compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial.

§15-1E-35. Investigation.

(a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth
of the matter set forth in the charges, consideration of the
form of charges, and a recommendation as to the disposition
which should be made of the case in the interest of justice and
discipline.

(b) The accused shall be advised of the charges against
him and of his right to be represented at that investigation by
counsel. Upon his own request he shall be represented by
civilian counsel if provided by him, or military counsel of his
own selection if such counsel is reasonably available, or by
counsel appointed by the person exercising general
court-martial jurisdiction over the command. At such
investigation full opportunity shall be given to the accused to
cross-examine witnesses against him if they are available and
to present anything he may desire in his own behalf, either in
defense or mitigation, and the investigating officer shall
examine available witnesses requested by the accused. If the
charges are forwarded after such investigation, they shall be
accompanied by a statement of the substance of the
testimony taken on both sides and a copy thereof shall be
given to the accused.

(c) If an investigation of the subject matter of an offense
has been conducted before the accused is charged with the
offense, and if the accused was present at the investigation
and afforded the opportunities for representation,
cross-examination, and presentation prescribed in subsection
(b), no further investigation of that charge is necessary under
this section unless it is demanded by the accused after he is
informed of the charge. A demand for further investigation
entitles the accused to recall witnesses for further
cross-examination and to offer any new evidence in his own
behalf.

(d) The requirements of this section are binding on all
persons administering this article.

§15-1E-36. Forwarding of charges.
When a person is held for trial by general court-martial, the
commanding officer shall, within eight days after the accused
is ordered into arrest or confinement, if practicable, forward
the charges, together with the investigation and allied papers,
to the person exercising general court-martial jurisdiction. If
that is not practicable, he shall report in writing to such
officer the reasons for delay.
§15-1E-37. Advice of staff judge advocate and reference for trial.
1 (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority shall not refer a charge to general court-martial for trial unless he has found that the charge alleges an offense under this article and is warranted by evidence indicated in the report of the investigation.
2 (b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and such changes in the charges and specifications as are needed to make them conform to the evidence may be made by the convening authority.

§15-1E-38. Service of charges.
1 The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace, no person shall, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section forty-two of this article in a general court-martial case within a period of five days after the service of the charges upon him, or in a special court-martial within a period of three days after the service of the charges upon him.

PART VII. TRIAL PROCEDURE.

1 (a) The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the governor by regulations, which shall apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state but which shall not be contrary to or inconsistent with this article.
2 (b) All rules and regulations made pursuant to the provisions of this section shall be uniform insofar as practicable among the state military forces.

1 (a) No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, shall censure, reprimand or
4 admonish the court or any member, military judge or counsel thereof, with respect to the finding or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this article shall attempt to coerce, or by any unauthorized means, influence, the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving or reviewing authority with respect to his judicial acts.

(b) In the preparation of an effectiveness, fitness or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the state military forces, no person subject to this article may, in preparing any such report:

1. Consider or evaluate the performance of duty of any such member as a member of a court-martial; or
2. Give a less favorable rating or evaluation of any member of the state military forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

§15-1E-41. Duties of trial counsel and defense counsel.

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the state of West Virginia, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel appointed under section thirty of this article.

Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were appointed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters he feels should
be considered in behalf of the accused on review, including
any objection to the contents of the record which he
considers appropriate.

(d) An assistant trial counsel of a general court-martial
may, under the direction of the trial counsel or when he is
qualified to be a trial counsel as required by section thirty of
this article, perform any duty imposed by law, regulation, or
the custom of the service upon the trial counsel of the court.
An assistant trial counsel of a special court-martial may
perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special
court-martial may, under the direction of the defense counsel
or when he is qualified to be the defense counsel as required
by section thirty of this article, perform any duty imposed by
law, regulations, or the custom of the service upon counsel for
the accused.

§15-1E-42. Sessions.
(a) At any time after the service of charges which have
been referred for trial to a court-martial composed of a
military judge and members, the military judge may, subject
to section thirty-eight of this article, call the court into session
without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or
objections which are capable of determination without trial of
the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be
ruled upon by the military judge under this section, whether
or not the matter is appropriate for later consideration or
decision by the members of the court;

(3) Holding the arraignment and receiving the pleas of the
accused; and

(4) Performing any other procedural function which may
be performed by the military judge under this part or under
rules prescribed pursuant to section thirty-nine of this article,
and which does not require the presence of the members of
the court. In the absence of a military judge, the presiding
officer of the court-martial may make such ruling.

These proceedings shall be conducted in the presence of
the accused, the defense counsel, and the trial counsel and
shall be made a part of the record.

(b) When the members of a court-martial deliberate or
vote, only the members may be present. All other
proceedings, including any other consultation of the court
with counsel or the military judge, shall be made a part of the
record and shall be in the presence of the accused, the
defense counsel, the trial counsel, and, in cases in which a
military judge has been detailed to the court, the military
judge.

§15-1E-43. Continuances.
1 The military judge or a court-martial without a military
judge may, for reasonable cause, grant a continuance to any
party for such time, and as often, as may appear to be just.

§15-1E-44. Challenges.
1 (a) The military judge and members of a general or special
court-martial may be challenged by the accused or the trial
counsel for cause stated to the court. The military judge, or if
none, the court, shall determine the relevancy and validity of
challenges for cause, and shall not receive a challenge to more
than one person at a time. Challenges by the trial counsel
shall ordinarily be presented and decided before those by the
accused are offered.
2 (b) Each accused and the trial counsel is entitled to one
peremptory challenge, but the military judge may not be
challenged except for cause.

§15-1E-45. Oaths.
1 (a) Before performing their respective duties, military
judges, members of general and special courts-martial, trial
counsel, assistant trial counsel, defense counsel, assistant
defense counsel, reporters and interpreters shall take an oath
to perform their duties faithfully. The form of the oath, the
time and place of the taking thereof, the manner of recording
the same, and whether the oath shall be taken for all cases in
which these duties are to be performed or for a particular
case, shall be in accordance with regulations prescribed by
the governor. These regulations may provide that an oath to
perform faithfully duties as a military judge, trial counsel,
assistant trial counsel, defense counsel, or assistant defense
counsel may be taken at any time by any judge advocate, or
other person certified to be qualified or competent for the
duty, and if such an oath is taken it need not again be taken at
the time the judge advocate or other person is detailed to that
duty.
(b) Each witness before a military court shall be examined
on oath or affirmation.
§15-1E-46. Statute of limitations.

(a) A person subject to this article, charged with desertion or absence without leave in time of war or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this section, a person subject to this part charged with desertion in time of peace or with the offense punishable under section one hundred eighteen of this article shall not be liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this section, a person subject to this article charged with any offense is not liable to be tried by court-martial or punished under section sixteen of this article, if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section sixteen of this article.

(d) Periods in which the accused was absent from territory in which the state has the authority to apprehend him or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

§15-1E-47. Former jeopardy.

(a) No person subject to this article shall, without his consent, be tried a second time for the same offense in a military court convened under this article. Prosecution under this article shall not bar prosecution by civil authorities for a crime or offense growing out of the same act or omission committed in violation of the laws of the civil jurisdiction, unless prohibited by res judicata or double jeopardy.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed. However, a proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority, or on motion of the prosecution for failure of available evidence or witnesses
without any fault of the accused, is a trial in the sense of this section.

1 (a) A plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty, if after arraignment before a court-martial:
2 (1) An accused makes an irregular pleading;
3 (2) After a plea of guilty an accused sets up a matter inconsistent with the plea;
4 (3) It appears that an accused has entered a plea of guilty improvidently or through lack of understanding of its meaning or effect; or
5 (4) An accused fails or refuses to plead.
6 (b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

§15-1E-49. Opportunity to obtain witnesses and other evidence.
1 (a) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the governor may prescribe.
2 (b) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which the courts of this state having criminal jurisdiction may lawfully issue and shall run to any part of the state and to any other state or territory, district or possession in which the court-martial may be sitting.

§15-1E-50. Refusal to appear or testify.
1 Any person not subject to this article who has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before such a court and who willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to
produce any evidence which that person may have been
legally subpoenaed to produce is guilty of an offense against
the state and a military court may punish him in the same
manner as the civil courts of this state.

§15-1E-51. Contempts.
1 A military court may punish for contempt any member of
2 the national guard who uses any menacing word, sign or
gesture in its presence, or who disturbs its proceedings by
any riot or disorder. The punishment may not exceed
confinement for thirty days or a fine of one hundred dollars,
or both. Any person other than a member of the national
guard who shall resort to disorderly, contemptuous or
insolent behavior in, or use any insulting or indecorous
language or expressions to or before, any military court, or
any member of either of such courts, in open court, to
interrupt the proceedings or to impair the authority of such
courts, shall be guilty of a misdemeanor and may be arrested
by the order of the president of the court, and at once
delivered to the civil authorities; and such person, if found
guilty, shall be fined not less than five nor more than fifty
dollars, or imprisoned in the county jail not exceeding thirty
days, or both fined and imprisoned.

§15-1E-52. Depositions.
1 (a) At any time after charges have been signed, as
provided in section thirty-three of this article, any party may
take oral or written depositions unless the military judge or
court-martial without a military judge hearing the case, or if
the case is not being heard, an authority competent to
convene a court-martial for the trial of those charges forbids it
for good cause. If a deposition is to be taken before charges
are referred for trial, such an authority may designate
commissioned officers to represent the prosecution and the
defense and may authorize those officers to take the
deposition of any witness.

(b) The party at whose instance a deposition is to be taken
shall give to every other party reasonable written notice of the
time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by
any military or civil officer authorized by the laws of the state
or by the laws of the place where the deposition is taken to
administer oaths.
19 (d) A duly authenticated deposition taken upon
20 reasonable notice to the other parties, so far as otherwise
21 admissible under the rules of evidence, may be read in
22 evidence before any military court or in any proceeding
23 before a court of inquiry, if it appears:
24 (1) That the witness resides or is beyond the state in which
25 the court is ordered to sit, or beyond the distance of one
26 hundred miles from the place of trial or hearing;
27 (2) That the witness by reason of death, age, sickness,
28 bodily infirmity, imprisonment, military necessity,
29 nonamenability to process, or other reasonable cause, is unable or
30 refuses to appear and testify in person at the place of trial or
31 hearing; or
32 (3) That the present whereabouts of the witness is
33 unknown.

1 (a) The sworn testimony, contained in the duly
2 authenticated record of proceedings of a court of inquiry, of a
3 person whose oral testimony cannot be obtained, may, if
4 otherwise admissible under the rules of evidence, be read in
5 evidence by any party before a court-martial if the accused
6 was a party before the court of inquiry and if the same issue
7 was involved or if the accused consents to the introduction of
8 such evidence.
9 (b) Such testimony may also be read in evidence before a
10 court of inquiry or a military board by either party.

§15-1E-54. Voting and rulings.
1 (a) Voting by members of a general or special
2 court-martial on the findings and on the sentence and by
3 members of a court-martial without a military judge upon
4 questions of challenge shall be by secret written ballot. The
5 junior member of the court shall count the votes. The count
6 shall be checked by the president, who shall forthwith
7 announce the result of the ballot to the members of the court.
8 (b) The military judge and, except for questions of
9 challenge, the presiding officer of a court-martial without a
10 military judge shall rule upon all questions of law and all
11 interlocutory questions arising during the proceedings. Any
12 such ruling made by the military judge upon any question of
13 law or any interlocutory question other than the factual issue
14 of mental responsibility of the accused, or by the presiding
15 officer of a court-martial without a military judge upon any
question of law other than a motion for a finding of not guilty, constitutes the ruling of the court.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

(3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the prosecution.

(d) Subsections (a), (b) and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

§15-1E-55. Number of votes required.

(a) No person subject to this article shall be convicted of any offense, except as provided in subsection (b), section forty-eight of this article, or by the concurrence of two thirds of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of two thirds of the members present at the time the vote is taken: Provided, That whenever two thirds of the court does not consist of an integral number, the next higher number shall be construed to represent two thirds of the court.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward
14 decreasing it, may be made by any lesser vote which indicates 
15 that the reconsideration is not opposed by the number of 
16 votes required for that finding or sentence. A tie vote on a 
17 challenge disqualifies the member challenged. A tie vote on a 
18 motion for a finding of not guilty or on a motion relating to 
19 the question of the accused's sanity is a determination against 
20 the accused. A tie vote on any other question is a 
21 determination in favor of the accused.

§15-1E-56. Court to announce action.
1 Every court-martial shall announce its findings and 
2 sentence to the parties as soon as determined.

§15-1E-57. Record of trial.
1 (a) Each general court-martial shall keep a separate record 
2 of the proceedings in each case brought before it, and the 
3 record shall be authenticated by the signatures of the military 
4 judge. If the record cannot be authenticated by the military 
5 judge by reason of his death, disability or absence, it shall be 
6 authenticated by the signature of the trial counsel or by that 
7 of a member if the trial counsel is unable to authenticate it by 
8 reason of his death, disability or absence. If the proceedings 
9 have resulted in an acquittal of all charges and specifications 
10 or in a sentence not including discharge and not in excess of 
11 that which may otherwise be adjudged by a special 
12 court-martial, the record need not contain a verbatim account 
13 of the proceedings and testimony before the court, but shall 
14 contain such matters as the governor may by regulation 
15 prescribe.
16 (b) Each special and summary courts-martial shall keep a 
17 separate record of the proceedings in each case, which record 
18 shall contain such matter and shall be authenticated in such 
19 manner as the governor may by regulation prescribe.
20 (c) A copy of the record of the proceedings of each general 
21 and special court-martial shall be given to the accused as soon 
22 as authenticated. If a verbatim record of trial by general 
23 court-martial is not required by subsection (a) of this section, 
24 but has been made, the accused may buy such a record under 
25 such regulations as the governor may prescribe.

PART VIII. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED.

§15-1E-58. Cruel and unusual punishments prohibited.
1 Punishment by flogging, or by branding, or marking or
tattooing on the body, or any other cruel or unusual
punishment, may not be adjudged by any court-martial or
inflicted upon any person subject to this part. The use of
irons, single or double, except for the purpose of safe custody,
is prohibited.

The punishment which a court-martial may direct for any
offense may not exceed such limits as the governor may
prescribe for that offense subject to the limits prescribed by
this article.

§15-1E-60. Effective date of sentences.
(a) Whenever a sentence of a court-martial as lawfully
adjudged and approved includes a forfeiture of pay or
allowances in addition to confinement not suspended, the
forfeiture may apply to pay or allowances accrued before that
date.
(b) Any period of confinement included in a sentence of a
court-martial begins to run from the date the sentence is
adjudged by the court-martial but any period of time prior to
execution of sentence shall be excluded in computing the
service of the term of confinement. Regulations prescribed by
the governor may provide that sentences of confinement may
not be executed until approved by the designated officers.
(c) All other sentences of courts-martial are effective on
the date ordered executed.

§15-1E-61. Execution of confinement.
(a) A sentence of confinement adjudged by a military
court, whether or not the sentence includes discharge or
dismissal, and whether or not the discharge or dismissal has
been executed, may be carried into execution by confinement
in any place of confinement under the control of any of the
forces of the state military forces or in any county or state jail,
prison or other place of confinement. Persons so confined in a
jail or prison are subject to the same discipline and treatment
as persons confined or committed to the jail or prison by the
courts of this state or of any political subdivision thereof.
(b) The omission of the words "hard labor" from any
sentence or punishment of a court-martial adjudging
confinement does not deprive the authority executing that
sentence or punishment of the power to require hard labor as
a part of the punishment.
(c) The keepers, officers and wardens of county jails or prisons under section twelve of this article shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. Any such keeper may require payment of a reasonable fee for so receiving or confining a person, to be paid upon requisition of the office of the adjutant general after confinement.

PART IX. REVIEW OF COURTS-MARTIAL.

§15-1E-62. Error of law; lesser included offense.
(a) A finding or sentence of court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.
(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense.

§15-1E-63. Initial action on the record.
After a trial by court-martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, in the absence of the convening authority, a successor in command, or by any officer exercising general court-martial jurisdiction.

§15-1E-64. Action on general court-martial records.
The convening authority shall refer the record of each general court-martial to his staff judge advocate or legal officer who shall submit his written opinion thereon to the convening authority. If there is no qualified staff judge advocate or legal officer available, the state judge advocate shall assign a judge advocate officer for such purpose. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

§15-1E-65. Reconsideration and revision.
(a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.
(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

1. For reconsideration of a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;
2. For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this article; or
3. For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.


(a) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing, in which case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Every rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

§15-1E-67. Approval by the convening authority.

In acting on the findings and sentence of a court-martial, the convening authority shall approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence shall constitute approval of the findings and sentence.
§15-IE-68. Disposition of records after review by the convening authority.

1 (a) When the governor has taken final action in a court-martial case in which he is the convening authority, there shall be no further review.

2 (b) When a convening authority other than the governor has taken final action in a general court-martial case, he shall forward the entire record, including his action thereon and the opinion or opinions of the staff judge-advocate or legal officer, to the state judge advocate.

3 (c) Where the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record shall be forwarded to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by a general court-martial. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be forwarded to the state judge advocate.

4 (d) All other special and summary court-martial records shall be reviewed by a judge advocate of the army national guard or air national guard and shall be transmitted and disposed of as the adjutant general may prescribe by regulations.

§15-IE-69. Review in the office of the state judge advocate.

1 Every record of trial by general court-martial in which there has been a finding of guilty and a sentence, and every record of trial by special court-martial in which the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, shall be examined in the office of the state judge advocate. If the state judge advocate so directs, the record shall be reviewed by a board of review in accordance with section seventy of this article.

§15-IE-70. Review by a board of review.

1 (a) The state judge advocate may constitute one or more boards of review, each composed of not less than three commissioned officers, each of whom shall be a member of the bar of the supreme court of appeals of West Virginia, and one of whom shall be a judge advocate of the army or air national guard.
(b) In a case referred to it, the board of review may act only
with respect to the findings and sentence as approved by the
convening authority. It may affirm only such findings of
guilty, and the sentence or such part or amount of the
sentence, as it finds correct in law and fact and determines, on
the basis of the entire record, should be approved. In
considering the record it shall have authority to weigh the
evidence, judge the credibility of witnesses, and determine
controverted questions of fact, recognizing that the trial court
saw and heard the witnesses.
(c) If the board of review sets aside the findings and
sentence, it may, except where the setting aside is based on
lack of sufficient evidence in the record to support the
findings, order a rehearing. If it sets aside the findings and
sentence and does not order a rehearing, it shall order that the
charges be dismissed.
(d) The state judge advocate shall, unless there is to be
further action by the governor, instruct the convening
authority to take action in accordance with the decision of the
board of review. If the board of review has ordered a
rehearing but the convening authority finds a rehearing
impracticable, he may dismiss the charges.
(e) In the event one or more boards of review are
constituted in accordance with this section, the state judge
advocate shall prescribe uniform rules of procedure for
proceedings in and before such board or boards of review.

1 Upon review of the record of trial by general court-martial
in which there has been a finding of guilty and a sentence and
upon review of the record of trial by special court-martial in
which the sentence as approved by an officer exercising
general court-martial jurisdiction includes a bad-conduct
discharge, the accused shall have the right to be represented
before the state judge advocate or the board of review, as the
case may be, by military counsel if requested by him or by
civilian counsel if provided by him. Appellate military
counsel shall be a commissioned officer of the state military
forces and shall be a member of the bar of the supreme court
of appeals of West Virginia.

§15-lE-72. Execution of sentence; suspension of sentence.
1 (a) No sentence extending to the dismissal of a
commissioned officer or dishonorable discharge or
bad-conduct discharge shall be executed until approved by
the governor. He shall approve the sentence or such part,
amount, or commuted form of the sentence as he sees fit, and
may suspend the execution of the sentence or any part of the
sentence, as approved by him.
(b) All other court-martial sentences, unless suspended,
may be ordered executed by the convening authority when
approved by him. The convening authority may suspend the
execution of any sentence.
§15-1E-73. Vacation of suspension.
(a) Prior to the vacation of the suspension of a special
court-martial sentence which as approved includes a
bad-conduct discharge, or of any general court-martial
sentence, the officer having special court-martial jurisdiction
over the probationer shall hold a hearing on the alleged
violation of probation. The probationer shall be represented
at the hearing by counsel if he so desires.
(b) The record of the hearing and the recommendation of
the officer having special court-martial jurisdiction shall be
forwarded for action to the officer exercising general
court-martial jurisdiction. If he vacates the suspension, any
unexecuted part of the sentence except a dismissal shall be
executed.
(c) The suspension of any other sentence may be vacated
by any authority competent to convene, for the command in
which the accused is serving or assigned, a court of the kind
that imposed the sentence.
§15-1E-74. Petition for a new trial.
At any time within two years after approval by the
convening authority of a court-martial sentence which
extends to dismissal, dishonorable discharge or bad-conduct
discharge, the accused may petition the governor for a new
trial on ground of newly discovered evidence or fraud on the
court-martial.
§15-1E-75. Remission and suspension.
(a) A convening authority may remit or suspend any part
or amount of the unexecuted part of any sentence, including
all uncollected forfeitures, other than a sentence approved by
the governor.
(b) The governor may, for good cause, substitute an
administrative form of discharge for a discharge or dismissal
executed in accordance with the sentence of a court-martial.
§15-1E-76. Restoration.
(a) Under such regulations as the governor may prescribe, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon a new trial or rehearing.
(b) When a previously executed sentence of dishonorable discharge or bad-conduct discharge is not sustained on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.
(c) When a previously executed sentence of dismissal is not sustained on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issue.

§15-1E-77. Finality of proceedings, findings and sentences.
The proceedings, findings and sentences of courts-martial as reviewed and approved, as required by this article, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval, as required by this article, shall be final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies and officers of the state subject only to action upon a petition for a new trial as provided in section seventy-four of this article, and to action by the governor as provided in section seventy-five of this article.

PART X. PUNITIVE SECTIONS.

§15-1E-78. Principals.
Any person subject to this article who:
(1) Commits an offense punishable by this article, or aids, abets, counsels, commands or procures its commission; or
(2) Causes an act to be done which if directly performed by him would be punishable by this article; is a principal.

§15-1E-79. Accessory after the fact.
Any person subject to this article who, knowing that an offense punishable by this article has been committed, receives, comforts or assists the offender in order to hinder or
prevent his apprehension, trial or punishment shall be punished as
a court-martial may direct.

§15-1E-80. Conviction of lesser included offense.
1 An accused may be found guilty of an offense necessarily
2 included in the offense charged or of an attempt to commit
3 either the offense charged or an offense necessarily included
4 therein.

§15-1E-81. Attempts.
1 (a) An act, done with specific intent to commit an offense
2 under this article, amounting to more than mere preparation
3 and tending even though failing to effect its commission, is an
4 attempt to commit that offense.
5 (b) Any person subject to this article who attempts to
6 commit any offense punishable by this article shall be
7 punished as a court-martial may direct, unless otherwise
8 specifically prescribed.
9 (c) Any person subject to this article may be convicted of
10 an attempt to commit an offense although it appears on the
11 trial that the offense was consummated.

§15-1E-82. Conspiracy.
1 Any person subject to this article who conspires with any
2 other person to commit an offense under this article shall, if
3 one or more of the conspirators does an act to effect the object
4 of the conspiracy, be punished as a court-martial may direct.

§15-1E-83. Solicitation.
1 (a) Any person subject to this article who solicits or
2 advises another or others to desert in violation of section
3 eighty-six of this article, or mutiny in violation of section
4 ninety-five of this article, shall, if the offense solicited or
5 advised is attempted or committed, be punished with the
6 punishment provided for the commission of the offense, but,
7 if the offense solicited or advised is not committed or
8 attempted, he shall be punished as a court-martial may direct.
9 (b) Any person subject to this article who solicits or
10 advises another or others to commit an act of misbehavior
11 before the enemy in violation of section one hundred of this
12 article, or sedition in violation of section ninety-five shall, if
13 the offense solicited or advised is committed, be punished
14 with the punishment provided for the commission of the
15 offense, but, if the offense solicited or advised is not
committed, he shall be punished as a court-martial may direct.

§15-1E-84. Fraudulent enlistment, appointment or separation.
1 Any person who:
2 (1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or
3 (2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation; shall be punished as a court-martial may direct.

§15-1E-85. Unlawful enlistment, appointment or separation.
1 Any person subject to this article who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment or separation because it is prohibited by law, regulation or order shall be punished as a court-martial may direct.

§15-1E-86. Desertion.
1 (a) Any member of the state military forces who:
2 (1) Without authority goes or remains absent from his unit, organization or place of duty with intent to remain away therefrom permanently;
3 (2) Quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or
4 (3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated; is guilty of desertion.
5 (b) Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.
6 (c) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.
§15-IE-87. Absence without leave.
1 Any person subject to this article who, without authority:
2 (1) Fails to go to his appointed place of duty at the time
3 prescribed;
4 (2) Goes from that place; or
5 (3) Absents himself or remains absent from his unit,
6 organization, or place of duty at which he is required to be at
7 the time prescribed; shall be punished as a court-martial may
8 direct.

1 Any person subject to this article who through neglect or
2 design misses the movement of ship, aircraft or unit with which he
3 is required in the course of duty to move shall be punished as a
4 court-martial may direct.

§15-IE-89. Contempt toward officials.
1 Any person subject to this article who uses contemptuous
2 words against the president of the United States, vice
3 president of the United States, Congress, secretary of
4 defense, or a secretary of a department, the governor of the
5 state of West Virginia, the West Virginia Legislature or the
6 adjutant general of the state of West Virginia, the governor or
7 the legislature of any state, territory or other possession of the
8 United States in which he is on duty or present shall be
9 punished as a court-martial may direct.

§15-IE-90. Disrespect toward superior commissioned officer.
1 Any person subject to this article who behaves with
2 disrespect toward his superior commissioned officer shall be
3 punished as a court-martial may direct.

§15-IE-91. Assulting or willfully disobeying superior
commissioned officer.
1 Any person subject to this article who:
2 (1) Strikes his superior commissioned officer or draws or
3 lifts up any weapon or offers any violence against him while
4 he is in the execution of his office; or
5 (2) Willfully disobeys a lawful command of his superior
6 commissioned officer; shall be punished as a court-martial
7 may direct.

§15-IE-92. Insuubordinate conduct toward warrant officer,
noncommissioned officer.
1 Any warrant officer or enlisted member who:
(1) Strikes or assaults a warrant officer, noncommissioned officer, while that officer is in the execution of his office;
(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer; or
(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, while that officer is in the execution of his office; shall be punished as a court-martial may direct.

§15-1E-93. Failure to obey order or regulation.
Any person subject to this article who:
(1) Violates or fails to obey any lawful general order or regulation; or
(2) Having knowledge of any other lawful order issued by a member of the state military forces, which it is his duty to obey, fails to obey the order; or
(3) Is derelict in the performance of his duties; shall be punished as a court-martial may direct.

Any person subject to this article who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

§15-1E-95. Mutiny or sedition.
(a) Any person subject to this article who:
(1) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise to do his duty or creates any violence or disturbance is guilty of mutiny;
(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition; or
(3) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.
(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.
1 Any person subject to this article who resists apprehension
2 or breaks arrest or who escapes from custody, restraint or
3 confinement imposed under this part shall be punished as a
4 court-martial may direct.

§15-IE-97. Releasing prisoner without proper authority.
1 Any person subject to this article who, without proper
2 authority, releases any prisoner committed to his charge, or
3 who through neglect or design suffers any such prisoner to
4 escape, shall be punished as a court-martial may direct.

§15-IE-98. Unlawful detention of another.
1 Any person subject to this article who, except as provided
2 by law or regulation, apprehends, arrests, restrains or
3 confines any person shall be punished as a court-martial may
4 direct.

1 Any person subject to this article who:
2 (1) Is responsible for unnecessary delay in the disposition
3 of any case of a person accused of an offense under this
4 article; or
5 (2) Knowingly and intentionally fails to enforce or comply
6 with any provision of this article regulating the proceedings
7 before, during, or after trial of an accused; shall be punished
8 as a court-martial may direct.

§15-IE-100. Misbehavior before the enemy.
1 Any person subject to this article who before or in the
2 presence of the enemy:
3 (1) Runs away;
4 (2) Shamefully abandons, or surrenders any command,
5 unit, place, or military property which it is his duty to defend;
6 (3) Through disobedience, neglect, or intentional
7 misconduct endangers the safety of any such command, unit,
8 place, or military property;
9 (4) Casts away his arms or ammunition;
10 (5) Is guilty of cowardly conduct;
11 (6) Quits his place of duty to plunder or pillage;
12 (7) Causes false alarms in any command, unit, or place
13 under control of the armed forces of the United States or the
14 state military forces;
15 (8) Willfully fails to do his utmost to encounter, engage,
16 capture or destroy any enemy troops, combatants, vessels, aircraft,
or any other thing, which it is his duty so to encounter, engage, capture or destroy; or
(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces belonging to the United States or their allies, to the state when engaged in battle or in suppressing civil disorders; shall be punished as a court-martial may direct.

Any person subject to this article who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the state military forces to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority; shall be punished as a court-martial may direct.

§15-1E-102. Improper use of countersign.
Any person subject to this article who discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

§15-1E-103. Forcing a safeguard.
Any person subject to this article who forces a safeguard shall be punished as a court-martial may direct.

§15-1E-104. Captured or abandoned property.
(a) Duty to secure property.—All persons subject to this article shall secure all public property taken from the enemy for the service of the United States or the state, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.
(b) Offenses defined and punishment.—Any person subject to this article who:
(1) Fails to carry out the duties prescribed in subsection (a);
(2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit or advantage to himself or another directly or indirectly connected with himself; or
(3) Engages in looting or pillaging; shall be punished as a court-martial may direct.
§15-1E-105. Aiding the enemy.
1 Any person subject to this article who:
  2 (1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or
  3 (2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall be punished as a court-martial may direct.

§15-1E-106. Misconduct of a prisoner.
1 Any person subject to this article who, while in the hands of the enemy:
  2 (1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom or regulation, to the detriment of others held by the enemy as civilian or military prisoners; or
  3 (2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court-martial may direct.

§15-1E-107. False official statements.
1 Any person subject to this article who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.

§15-1E-108. Loss, damage, destruction or wrongful disposition of military property.
1 Any person subject to this article who without proper authority:
  2 (1) Sells or otherwise disposes of;
  3 (2) Willfully or through neglect damages, destroys or loses;
  4 or
  5 (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of; any military property of the United States or of the state; shall be punished as a court-martial may direct.

§15-1E-109. Waste, spoilage or destruction of nonmilitary property.
1 Any person subject to this article who, while in a duty status, willfully or recklessly wastes, spoils, or otherwise
willfully and wrongfully destroys or damages any property other than military property belonging to the United States or of the state shall be punished as a court-martial may direct.

§15-1E-110. Improper hazarding of vessel.
(a) Willful conduct.—Any person subject to this article who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.
(b) Negligent conduct.—Any person subject to this article who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

§15-1E-111. Drunken or reckless driving.
Any person subject to this article who while in a duty status operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

§15-1E-112. Drunk on duty, sleeping on post and leaving post before relief.
Any person subject to this article who is found drunk on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

§15-1E-113. Dueling.
Any person subject to this article who, while in a duty status, fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

§15-1E-114. Malingering.
Any person subject to this article who for the purpose of avoiding work, duty or service in the state military forces:
(1) Feigns illness, physical disablement, mental lapse or derangement; or
(2) Intentionally inflicts self-injury; shall be punished as a court-martial may direct.

§15-1E-115. Riot or breach of peace.
Any person subject to this article who while in a duty status
causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

§15-IE-116. Provoking speeches or gestures.
Any person subject to this article who while in a duty status uses provoking or reproachful words or gestures toward any other person subject to this article shall be punished as a court-martial may direct.

Any person subject to this article who in a judicial proceeding or in a course of justice conducted under this article willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

§15-IE-118. Frauds against the government.
Any person subject to this article (1) who, knowing it to be false or fraudulent:
(i) Makes any claim against the United States, the state, or any officer thereof; or
(ii) Presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, the state, or any officer thereof; or
(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:
(i) Makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements;
(ii) Makes any oath to any fact or to any writing or other paper knowing such oath to be false; or
(iii) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited; or
(3) Who, having charge, possession, custody or control of any money, or other property of the United States or the state of West Virginia, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or
(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state of West Virginia, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct.

§15-1E-119. Larceny and wrongful appropriation.
(a) Offenses defined.—Any person subject to this article who while in a duty status wrongfully takes, obtains or withholds, by any means whatever, from the possession of the true owner or of any other person, any money, personal property, or article of value of any kind:
(1) With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner, is guilty of wrongful appropriation.
(2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner, is guilty of wrongful appropriation.
(b) Punishment.—Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

§15-1E-120. Assault.
Any person subject to this article who while in a duty status attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

§15-1E-121. Conduct unbecoming an officer and a gentleman.
Any commissioned officer who is convicted of conduct unbecoming of an officer and a gentleman shall be punished as a court-martial may direct.

§15-1E-122. General article.
Though not specifically mentioned in this article, all disorders and neglects to the prejudice of good order and discipline in the state military forces, and all conduct of a nature to bring discredit upon the state military forces, of
which persons subject to this article may be guilty, shall be
taken cognizance of by a general, special or summary
court-martial, according to the nature and degree of the
offense, and shall be punished at the discretion of such court.
However, jurisdiction shall not be extended to crimes not
included herein, and within the jurisdiction of the civil courts
of this state.

§15-IE-123. Embezzlement.
Any person subject to this article who shall embezzle,
misapply or convert to his own use, without authority, any
moneys received by or entrusted to him for disbursement or
articles of military equipment shall be punished as a
court-martial may direct.

§15-IE-124. Purchasing and receiving military property in
pawn.
If any person shall knowingly and willfully purchase, or
receive in pawn or pledge any military property of the state of
West Virginia or of the United States in use by the state of
West Virginia, he shall be punished as a court-martial may
direct.

PART XI. MISCELLANEOUS PROVISIONS.

(a) Courts of inquiry to investigate any matter may be
convened by any person authorized to convene a general
court-martial or by any other person designated by the
governor for that purpose, whether or not the persons
involved have requested such an inquiry.
(b) A court of inquiry consists of three or more
commissioned officers. For each court of inquiry the
convening authority shall also appoint counsel for the court.
(c) Any person subject to this article whose conduct is
subject to inquiry shall be designated as a party. Any person
subject to this article or employed in the office of state
adjutant general who has a direct interest in the subject of
inquiry shall have the right to be designated as a party upon
request to the court. Any person designated as a party shall be
given due notice and has the right to be present, to be
represented by counsel, to cross-examine witnesses, and to
introduce evidence.
(d) Members of a court of inquiry may be challenged by a
party, but only for cause stated to the court.
(e) The members, counsel, the reporter, and interpreters of
courts of inquiry shall take an oath or affirmation to faithfully
perform their duties.
(f) Witnesses may be summoned to appear and testify and
be examined before courts of inquiry, as provided for
courts-martial.
(g) Courts of inquiry shall make findings of fact but shall
not express opinions or make recommendations unless
required to do so by the convening authority.
(h) Each court of inquiry shall keep a record of its
proceedings, which shall be authenticated by the signatures
of the president and counsel for the court and forwarded to
the convening authority. In case the record cannot be
authenticated by the president, it shall be signed by a
member in lieu of the president. In case the record cannot be
authenticated by the counsel for the court, it shall be signed
by a member in lieu of the counsel.

§15-1E-126. Authority to administer oaths.
(a) The following members of the state military forces may
administer oaths for the purposes of military administration,
including military justice:
(1) The state judge advocate and all assistant state judge
advocates.
(2) All summary courts-martial.
(3) All adjutants, assistant adjutants, acting adjutants and
personnel adjutants.
(4) All staff judge advocates and legal officers.
(5) All other persons designated by law or regulation.
(b) The following persons in the state military forces shall
have authority to administer oaths necessary in the
performance of their duties:
(1) The president, military judge, trial counsel, and
assistant trial counsel for all general and special
courts-martial.
(2) The president and the counsel for the court of any
court of inquiry.
(3) All officers designated to take a deposition.
(4) All persons detailed to conduct an investigation.
(5) All other persons designated by law or regulation.
(c) The signature without seal of any such person, together
with the title of his office, is prima facie evidence of his
authority.
§15-1E-127. Text of article to be available.
1 A complete text of this article and of the regulations prescribed by the governor thereunder shall be made available to any member of the state military forces, upon his request, for his personal examination.

1 Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon due application to such commander, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. That officer shall examine into said complaint and take proper measures for redressing the wrong.

§15-1E-129. Redress of injuries to property.
1 (a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the state military forces, he may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board is subject to the approval of the commanding officer, and in the amount approved by him and may be charged against the pay of the offenders. The order of such commanding officer directing charges herein authorized shall be conclusive, except as provided in subsection (b) on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.
20 (b) Any person subject to this article who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. He has the right of appeal to the next higher commander.

§15-1E-130. Execution of process and sentence.
1 In the state military forces, the processes and sentences of
its courts-martial shall be executed by the civil officers prescribed by the laws of this state or by the officers of the state military forces as the circumstances may require. Fees for serving processes provided for in this article shall be the same as prescribed by law for similar processes of a civil nature, and shall upon proper vouchers being filed, be paid by the adjutant general in the usual manner.

All fines and penalties imposed and collected through the sentence of courts-martial shall be forwarded to the adjutant general who shall deposit the same in the state treasury, to be credited to the state school fund in the same manner as other fines which accrue to the state.

§15-1E-132. Liability of public officers for nonexecution of process.
The neglect or refusal of any sheriff, police officer, jail warden or magistrate to execute any process, or to make proper return of all fines and penalties collected, or to receive in custody any prisoner, shall be deemed a misdemeanor and shall subject the offender to a prosecution by the proper county prosecuting attorney, and to a penalty, upon conviction of each such offense, of five hundred dollars to the use of the state.

§15-1E-133. Compensation of court.
Military judges, military counsel and members of courts-martial and courts of inquiry shall be allowed transportation and per diem pay as per military grade for time actually employed in the duties assigned them. Transportation shall be furnished to all prosecutors, prisoners, witnesses, sheriffs, police officers to and from the place or places designated for the meetings of said courts. The per diem pay for civilian witnesses shall be the same as in civil courts of law and for military personnel the amount as provided by law and regulation. The fees of sheriffs for serving the processes provided for in this article shall be the same as prescribed by law for similar processes of a civil nature and shall, upon proper vouchers being filed, be paid by the adjutant general in the usual manner.

§15-1E-134. Immunity for action of military courts.
No accused may bring an action or proceeding against the convening authority or a member of a military court or officer
3 or person acting under its authority or reviewing its
4 proceedings because of the approval, imposition or exe-
5 cution of any sentence or the imposition or collection of a
6 fine or penalty, or the execution of any process or mandate of
7 a military court.

§15-IE-135. Entitlement to reemployment rights.
1 Members of the state military forces of this state who are
2 ordered to active state duty by the governor shall, upon being
3 relieved from such duty, be entitled to the same
4 reemployment rights provided by Title 38, Section 2021 of the
5 United States Code on the effective date of this section for
6 persons inducted into the armed forces of the United States.

1 The governor may delegate any authority vested in him
2 under this article, and may provide for the subdelegation of
3 any such authority, except the power given him by sections
4 twenty-one and twenty-two of this article.

§15-IE-137. Uniformity on interpretation.
1 This article shall be so construed as to effectuate its general
2 purpose to make uniform the law of this state, so far as
3 practical, with the law of the United States, especially as
4 embodied in the Uniform Code of Military Justice.

1 Each section of this article and every part thereof is hereby
2 declared to be an independent section or part of a section, and
3 if any section, subsection, sentence, clause or phrase of this
4 article shall for any reason be held unconstitutional, the
5 validity of the remaining phrases, clauses, sentences,
6 subsections and sections of this article shall not be affected
7 thereby.

CHAPTER 103
(H. B. 1694—By Mr. Bumgarner and Mr. Moore)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to providing the
director of the department of mines with the authority to
subpoena witnesses and documents in any hearing, investiga-
tion or examination of any mine or well.

Be it enacted by the Legislature of West Virginia:

That section four, article one, 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 1. ADMINISTRATION; ENFORCEMENT.

§22-1-4. Director of the department of mines—Powers and duties.

The director of the department of mines shall have full
charge of the department. He shall have the power and duty
to:

1. Supervise and direct the execution and enforcement
of the provisions of this chapter.

2. Appoint a deputy director of the department of mines,
fix his compensation and prescribe his powers and duties.

3. Employ such assistants, clerks, stenographers and
other employees as may be necessary to fully and effectively
carry out the provisions of this law and fix their compensation,
except as otherwise provided in this article.

4. Employ mine inspectors, and assign them to divisions
or districts in accordance with the provisions of section
seven of this article as may be necessary to fully and effect-
tively carry out the provisions of this law, including the
hiring and training of inspectors for the specialized require-
ments of surface mining, shaft and slope sinking, and surface
installations and to supervise and direct such mine inspectors
in the performance of their duties.

5. Suspend, for good cause, any mine inspector without
compensation for a period not exceeding thirty days in any
calendar year.

6. Prepare report forms to be used by mine inspectors
in making their findings, orders and notices, upon inspections
made in accordance with this chapter.
(7) Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of this article.

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(9) Make annually a full and complete written report of the administration of his department to the governor and the Legislature of the state for the year ending the thirtieth day of June. Such report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (including oil and gas) produced in the state, the number of men employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, proceedings, the total funds of the department from all sources identifying each source of such funds, the expenditures of the department, the surplus or deficit of the department at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the department, the number of inspections made by each inspector, the number and type of violations found by each inspector: Provided, That no inspector shall be identified by name in this report. Such reports shall be filed with the governor and the Legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(10) Call or subpoena witnesses, to administer oaths and to require production of any books, papers, records, or other documents relevant or material to any hearing, investigation or examination of any mine or well permitted by this chapter. Any witness so called or subpoenaed shall receive forty
dollars per diem and shall receive mileage at the rate of fifteen cents for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such witness.

(11) Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or his agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his representative.

(12) Perform all other duties which are expressly imposed upon him by the provisions of this chapter.

(13) Make all records of the department open for inspection of interested persons and the public.

(14) In conjunction with the director of the department of natural resources, adopt programs, regulations and procedures designed to assist the small coal operator with obtaining permits and meeting the environmental protection performance standards for strip and underground coal mining operations within the state. For the purposes of this subdivision, a small coal operator is one who is anticipated to mine less than two hundred thousand tons per year, but the department in determining tonnage shall consider wholly owned subsidiaries to be the same operation as the parent corporation.

CHAPTER 104

(Com. Sub. for S. B. 404—By Mr. Tonkovich)

[Passed March 13, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article two-a by adding thereto two new sections, designated sections four-a and four-b, all relating to the board of coal mine health and safety generally; continuing the board
as heretofore established; establishing the number of members and requiring that they be residents of the state; setting forth the method by which persons are nominated for membership and appointed to the board by the governor; establishing certain qualifications for persons who are appointed as members; requiring appointments to be made with the advice and consent of the Senate; making the director of the department of mines a member of the board; scheduling the expiration of beginning terms of members; providing for the appointment of a health and safety administrator by the governor; setting forth procedures for meetings; providing for the filling of vacancies; defining a quorum; outlining the preliminary procedures to be utilized for the promulgation of rules and regulations; describing the employment term of the health and safety administrator and providing for his qualifications and duties; authorizing the employment of additional employees; setting forth the requirements for compensation of the health and safety administrator and other employees; and allowing for compensation and expenses of board members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-2A-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.


§22-2A-4b. Health and safety administrator; qualifications; duties; employees; compensation.


§22-2A-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

(a) The board of coal mine health and safety, heretofore established, is continued as provided by this chapter. The board shall consist of seven members who shall be residents of this state, and who shall be appointed as hereinafter specified in this section:
(1) The governor shall appoint one member to represent the viewpoint of those operators in this state whose individual aggregate production exceeds one million tons annually and one member to represent the viewpoint of those operators in this state whose individual aggregate production is less than one million tons annually, which tonnage shall include tonnage produced by affiliated, parent and subsidiary companies and tonnage produced by companies which have a common director or directors, shareholder or shareholders, owner or owners. When such members are to be appointed, the governor may request from the major trade association representing operators in this state a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in coal mine health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated. For purposes of this subdivision, the major trade association representing operators in this state shall be deemed to be that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The governor shall appoint two members who can reasonably be expected to represent the viewpoint of the working miners of this state. If the major employee organization representing coal miners in this state is divided into administrative districts, such members shall not be from the same administrative district. The highest ranking official within the major employee organization representing coal miners in this state shall, upon request by the governor, submit a list of three nominees for each such position on the board: Provided, That if the major employee organization representing coal miners in this state is divided into administrative districts, and if there are two vacancies to be filled in accordance with the provisions of this subdivision, not more than two persons on each list of three nominees shall be from the same administrative district and at least three districts shall be represented on the two lists submitted, and if there is one vacancy to be filled, no names shall be submitted of persons from the same administrative district already represented on the board. Said nominees shall have a
49 background in coal mine health and safety, and shall at the
time of their appointment be employed in a position which
involves the protection of health and safety of miners. There
shall be submitted with such list a summary of the
qualifications of each nominee. If the full lists of nominees
are submitted in accordance with the provisions of this
subdivision, the governor shall make his appointments from
the persons so nominated.

(3) The governor shall appoint one public member who is
professionally qualified in the field of occupational health
and safety and who shall be (A) an employee of the institute of
labor studies at West Virginia university or (B) a person who
is engaged in or who has broad experience in occupational
health and safety from the perspective of the worker. Such
nominee shall have technical experience in occupational
health and safety or education and experience in such field:
Provided, That the nominee shall not have been, prior to his
appointment to the board, employed by a mining or industrial
business entity in a managerial or supervisory position, or
shall not have been employed by the major employee
organization representing coal miners in this state, or shall
not have been a miner.

(4) The governor shall appoint one public member who is
professionally qualified in the field of occupational health
and safety and who shall have a degree in engineering or
industrial safety and a minimum of five years' experience in
the field of industrial safety engaged in constructing,
designing, developing or administering safety programs:
Provided, That the nominee shall not have been, prior to his
appointment to the board, employed by a mining business
dentity in a managerial or supervisory position or shall not
have been employed by the major employee organization
representing coal miners in this state, or shall not have been a
miner.

(5) All appointments made by the governor under the
provisions of subdivisions (1), (2), (3) and (4) of this subsection
shall be with the advice and consent of the Senate.

(6) The seventh member of the board shall be the director
of the department of mines who shall serve as chairman of the
board. The director shall furnish to the board such secretarial,
clerical, technical, research and other services as are deemed
necessary to the conduct of the business of the board, not
otherwise furnished by the board.
(b) The members of the board to be appointed as provided for in subsection (a) of this section shall be so appointed within sixty days following the effective date of this section. Any unexpired term of members of the board under prior enactments of this section shall end upon the appointment of members in accordance with the provisions of this section. Upon the initial appointment of members, the governor shall specify the length of the beginning term which each member shall serve, pursuant to the following formula:

(1) With regard to the two members appointed in accordance with the provisions of subdivision (1), subsection (a) of this section, one member shall serve a beginning term of one year, and one member shall serve a beginning term of two years.

(2) With regard to the two members appointed in accordance with the provisions of subdivision (2), subsection (a) of this section, one member shall serve a beginning term of one year and one member shall serve a beginning term of two years.

(3) The members appointed in accordance with the provisions of subdivisions (3) and (4), subsection (a) of this section shall each be appointed to serve a beginning term of three years.

(4) Following the beginning terms provided for in this subsection, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members shall be eligible for reappointment.

(c) The governor shall appoint a health and safety administrator in accordance with the provisions of section four-b of this article, who shall certify all official records of the board. The health and safety administrator shall be a full-time officer of the board of coal mine health and safety with the duties provided for in section four-b of this article. The health and safety administrator shall have such education and experience as the governor deems necessary to properly investigate areas of concern to the board in the development of rules and regulations governing mine health and safety. The governor shall appoint as health and safety administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The health and safety administrator shall be a person who has not been, during the two years immediately preceding his
appointment, and is not during his term, an officer, trustee, director, substantial shareholder or employee of any coal operator, or an employee or officer of an employee organization, or a spouse of any such person. The health and safety administrator shall have the expertise to draft proposed rules and regulations and shall prepare such rules and regulations as are required by this chapter and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chairman, or upon the request of any three members of the board. Under the direction of the board, the health and safety administrator shall prepare an agenda for each board meeting giving priority to the promulgation of rules and regulations as may be required from time to time by this chapter, and as may be required to improve coal mine health and safety. The health and safety administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the chairman, in which event members shall be notified of the board meeting and the agenda in a manner to be determined by the chairman: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice or additional agenda.

When proposed rules and regulations are to be finally adopted by the board, copies of such proposed rules and regulations shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules and regulations shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules and regulations. When a member shall fail to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the
health and safety administrator shall notify the member and
the governor of such fact. Such member shall be removed by
the governor unless good cause for absences is shown.
(e) Whenever a vacancy on the board occurs, nominations
and appointments shall be made in the manner prescribed in
this section: Provided, That in the case of an appointment to
fill a vacancy, nominations of three persons for each such
vacancy shall be requested by and submitted to the governor
within thirty days after the vacancy occurs by the major trade
association or major employee organization, if any, which
nominated the person whose seat on the board is vacant. The
vacancy shall be filled by the governor within thirty days of
his receipt of the list of nominations.
(f) A quorum of the board shall be five members which
shall include the director, at least one member representing
the viewpoint of operators and at least one member
representing the viewpoint of the working miners, and the
board may act officially by a majority of those members who
are present.
§22-2A-4a. Preliminary procedures for promulgation of rules
and regulations.
(a) Prior to the posting of proposed rules and regulations
as provided for in subsection (c), section four of this article,
the board shall observe the preliminary procedure for the
development of rules and regulations set forth in this section:
(1) During a board meeting or at any time when the board
is not meeting, any board member may suggest to the health
and safety administrator, or such administrator on his own
initiative may develop, subjects for investigation and possible
regulation;
(2) Upon receipt of a suggestion for investigation, the
health and safety administrator shall prepare a report, to be
given at the next scheduled board meeting, of the technical
evidence available which relates to such suggestion, the staff
time required to develop the subject matter, the legal
authority of the board to act on the subject matter, including a
description of findings of fact and conclusions of law which
will be necessary to support any proposed rules and
regulations;
(3) The board shall by majority vote of those members
who are present determine whether the health and safety
administrator shall prepare a draft regulation concerning the
suggested subject matter;
(4) After reviewing the draft regulation, the board shall determine whether the proposed rules and regulations should be posted and made available for comment as provided for in section four of this article;

(5) The board shall receive and consider those comments to the proposed rules and regulations as provided for in section four of this article;

(6) The board shall direct the health and safety administrator to prepare for the next scheduled board meeting findings of fact and conclusions of law for the proposed rules and regulations, which may incorporate comments received and technical evidence developed, and which are consistent with section four of this article;

(7) The board shall adopt or reject or modify the proposed findings of fact and conclusions of law; and

(8) The board shall make a final adoption or rejection of the rules and regulations.

(b) By the concurrence of at least four members of the board, the board may dispense with the procedure set out in (a) above or any other procedural rule established, except that the board shall in all instances when adopting rules and regulations prepare findings of fact and conclusions of law consistent with this section and section four of this article.

(c) Without undue delay, the board shall adopt an order of business for the conduct of meetings which will promote the orderly and efficient consideration of proposed rules and regulations in accordance with the provisions of this section.

§22-2A-4b. Health and safety administrator; qualifications; duties; employees; compensation.

(a) The governor shall appoint the health and safety administrator of the board for a term of employment of one year. The health and safety administrator shall be entitled to have his contract of employment renewed on an annual basis except where such renewal is denied for cause: Provided, That the governor shall have the power at any time to remove the health and safety administrator for misfeasance, malfeasance or nonfeasance: Provided, however, That the board shall have the power to remove the health and safety administrator without cause upon the concurrence of five members of the board.

(b) The health and safety administrator shall work at the direction of the board, independently of the director of the
department of mines, and shall have such authority and
duties as may be required or necessary to
perform such duties as may be required or necessary to
effectuate this article.

(c) In addition to the health and safety administrator,
there shall be such other research employees hired by the
health and safety administrator as the board determines to
be necessary. The health and safety administrator shall
provide supervision and direction to the other research
employees of the board in the performance of their duties.

(d) The employees of the board shall be compensated at
rates determined by the board. The salary of the health and
safety administrator shall be fixed by the governor: Provided,
That the salary of the health and safety administrator shall
not be reduced during his annual term of employment or
upon the renewal of his contract for an additional term. Such
salary shall be fixed for any renewed term at least ninety days
before the commencement thereof.

(e) The health and safety administrator shall review all
coal mining fatalities and major causes of injuries as
mandated by section four of this article. An analysis of such
fatalities and major causes of injuries shall be prepared for
consideration by the board within ninety days of the
occurrence of the accident.

(f) At the direction of the board, the administrator shall
also conduct an annual study of occupational health issues
relating to employment in and around coal mines of this state
and submit a report to the board with findings and proposals
to address the issues raised in such study. The administrator
shall be responsible for preparing the annual reports required
by subsection (e), section four of this article and section six of this
article.


Each member of the board not otherwise employed by the
state shall receive one hundred dollars per diem while
actually engaged in the performance of the duties of the
board. All members shall be reimbursed for all reasonable
and necessary expenses actually incurred during the
performance of their duties, except that in the event the
expenses are paid by a third party, the members shall not be
reimbursed by the state. The reimbursement shall be paid out
of the state treasury upon a requisition upon the state auditor,
properly certified by the director of the department of mines.
10 No employer shall prohibit a member of the board from
11 exercising leave of absence from his place of employment in
12 order to attend a meeting of the board or a meeting of a
13 subcommittee of the board, or to prepare for a meeting of the
14 board, any contract of employment to the contrary
15 notwithstanding.

CHAPTER 105

(Com. Sub. for H. B. 1254—By Mr. Martin, 30th Dist., and Mr. Harman, 32nd Dist.)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, 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 one-l, relating to the issuance of permits for the drilling, redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing of oil and gas wells; prohibiting the issuance of such permits where royalties are based upon annual flat well royalty systems or any similar provisions for compensation which are less than one eighth of the value or volume of the production of the oil and gas of such wells; legislative findings and declarations with respect thereto; requiring the payment of one-eighth royalty upon the production of such oil and gas; requiring that all leases or other contractual agreements, by which the right to extract, produce or market oil or gas is claimed, be filed with all permit applications, or in the alternative, requiring certain filings to identify the parties and property involved and describe the royalty agreements and place of recordation; providing for the filing of certain affidavits when leases provide for less than one-eighth royalty; granting a cause of action to enforce provisions of this section; and providing for exceptions to and the enforcement of the provisions of said section.

Be it enacted by the Legislature of West Virginia:

That article four, 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 one-l, to read as follows:
ARTICLE 4. OIL AND GAS WELLS.

§22-4-11. Permits not to be issued on flat well royalty leases; legislative findings and declarations; permit requirements.

(a) The Legislature hereby finds and declares:

(1) That a significant portion of the oil and gas underlying this state is subject to development pursuant to leases or other continuing contractual agreements where-in the owners of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty basis, in which the royalty is based solely on the existence of a producing well, and thus is not inherently related to the volume of the oil and gas produced or marketed;

(2) That continued exploitation of the natural resources of this state in exchange for such wholly inadequate compensation is unfair, oppressive, works an unjust hardship on the owners of the oil and gas in place, and unreasonably deprives the economy of the state of West Virginia of the just benefit of the natural wealth of this state;

(3) That a great portion, if not all, of such leases or other continuing contracts based upon or calling for an annual flat well royalty, have been in existence for a great many years and were entered into at a time when the techniques by which oil and gas are currently extracted, produced or marketed, were not known or contemplated by the parties, nor was it contemplated by the parties that oil and gas would be recovered or extracted or produced or marketed from the depths and horizons currently being developed by the well operators;

(4) That while being fully cognizant that the provisions of section ten, article I of the United States constitution and of section four, article III of the constitution of West Virginia, proscribe the enactment of any law impairing the obligation of a contract, the Legislature further finds that it is a valid exercise of the
police powers of this state and in the interest of the
state of West Virginia and in furtherance of the welfare
of its citizens, to discourage as far as constitutionally
possible the production and marketing of oil and gas
located in this state under the type of leases or other con-
tinuing contracts described above.

(b) In the light of the foregoing findings, the Legislature
hereby declares that it is the policy of this state, to the extent
possible, to prevent the extraction, production or marketing
of oil or gas under a lease or leases or other continuing
contract or contracts providing a flat well royalty or any
similar provisions for compensation to the owner of the oil
and gas in place, which is not inherently related to the volume
of oil or gas produced or marketed, and toward these ends,
the Legislature further declares that it is the obligation of
this state to prohibit the issuance of any permit required by
it for the development of oil or gas where the right to develop,
extact, produce or market the same is based upon such
leases or other continuing contractual agreements.

(c) In addition to any requirements contained in this
article with respect to the issuance of any permit required
for the drilling, redrilling, deepening, fracturing, stimulating,
pressuring, converting, combining or physically changing to
allow the migration of fluid from one formation to another,
no such permit shall be hereafter issued unless the lease
or leases or other continuing contract or contracts by which
the right to extract, produce or market the oil or gas is
filed with the application for such permit. In lieu of filing
the lease or leases or other continuing contract or contracts,
the applicant for a permit described herein may file the
following:

(1) A brief description of the tract of land including the
district and county wherein the tract is located;

(2) The identification of all parties to all leases or other
continuing contractual agreements by which the right to ex-
tract, produce or market the oil or gas is claimed;

(3) The book and page number wherein each such lease
or contract by which the right to extract, produce or market
the oil or gas is recorded; and
(4) A brief description of the royalty provisions of each such lease or contract.

(d) Unless the provisions of subsection (e) are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation to another, of an existing oil or gas production well, where or if the right to extract, produce or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for flat well royalty or any similar provision for compensation to the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so extracted, produced and marketed.

(e) To avoid the permit prohibition of subsection (d) hereof, the applicant may file with such application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to state that it shall tender to the owner of the oil or gas in place not less than one eighth of the total amount paid to or received by or allowed to the owner of the working interest at the wellhead for the oil or gas so extracted, produced or marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas in place, on all such oil or gas to be extracted, produced or marketed from the well. If such affidavit be filed with such application, then such application for permit shall be treated as if such lease or leases or other continuing contract or contracts comply with the provisions of this section.

(f) The owner of the oil or gas in place shall have a cause of action to enforce his rights established by this section.

(g) The provisions of this section shall not affect or apply to any lease or leases or other continuing contract or contracts for the underground storage of gas or any well utilized in connection therewith or otherwise subject to the provisions of article seven of this chapter.

(h) The administrator shall enforce this requirement irrespective of whether such lease or other continuing con-
tract was executed before or after the effective date of this section.

(i) The provisions of this section shall not adversely affect any rights to free gas.

CHAPTER 106

(Com. Sub. for S. B. 288—By Mr. Colombo, Mr. White and Mr. Heck)

[Passed March 13, 1982; in effect April 1, 1982. Approved by the Governor—]

AN ACT to amend and reenact sections three and seven, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, six, seven, eight and nine, article two-a; to amend and reenact section five, article three, chapter seventeen-d of said code; and to amend and reenact section thirty-one, article six, and section one, article six-a, chapter thirty-three of said code, all relating to motor vehicle insurance or other security; requirement of minimum level of security for registration and operation of a motor vehicle in this state; application for registration; deleting requirement of certificate of insurance upon application; statement of insurance or proof of security; random sample verification of statements; penalties for providing false information or proof of security; fees; department to refuse registration or certificate of title upon failure of applicant to present statement of insurance or proof of security; security upon motor vehicles; exclusions for certain government vehicles; providing that owners or registrants of periodic use or seasonal motor vehicles may maintain insurance only for the portion of the year in actual use; defining “periodic use or seasonal vehicle”; requiring proof of insurance to be carried in vehicle; defining “proof of insurance”; notice of cancellation or nonrenewal of insurance policy; providing for notice to commissioner of motor vehicles within five days after cancellation or termination of insurance policy and certain exceptions; investigations to include inquiry regarding insurance or security; law-enforcement officer or court to notify commissioner of motor vehicles upon failure of operator to provide proof of security; suspension or
revocation of operator's or chauffeur's license or vehicle registration; notice; hearing; rules and regulations; deleting reference to commissioner of insurance; criminal penalties; making uninsured motorist coverage optional if waived in writing; providing for option to purchase uninsured and underinsured motorists coverage up to limits of liability insurance; commissioner of insurance to review uninsured and underinsured insurance rate structure and report to Legislature; providing for ten days' notice to insured upon cancellation of automobile liability policy for failure of consideration upon initial issuance of policy.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Anti-Theft Provisions.

17D. Motor Vehicle Safety Responsibility Law.

33. Insurance.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTI-THEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATE OF TITLE.

§17A-3-3. Application for registration, statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

§17A-3-7. Grounds for refusing registration or certificate of title.

§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

1 Every owner of a vehicle subject to registration
hereunder shall make application to the department for the registration thereof upon the appropriate form or forms furnished by the department and every such application shall bear the signature of the owner or his authorized agent, written with pen and ink, and said application shall contain:

(1) The name, bona fide residence and mailing address of the owner, the county in which he resides, or business address of the owner if a firm, association or corporation.

(2) A description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the manufacturer's serial or identification number or other number as determined by the commissioner.

(3) In the event a motor vehicle is designed, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its declared gross weight if such motor vehicle is to be used alone, or if such motor vehicle is to be used in combination with other vehicles the application for registration of such motor vehicle shall include a statement of the combined declared gross weight of such motor vehicle and the vehicles to be drawn by such motor vehicle; declared gross weight being the weight declared by the owner to be the actual combined weight of the vehicle or combination of vehicles and load when carrying the maximum load which the owner intends to place thereon; and the application for registration of each such vehicle shall also include a statement of the distance between the first and last axles of that vehicle or combination of vehicles. The declared gross weight stated in the application shall not exceed the permissible gross weight for the axle spacing listed therein as determined by the table of permissible gross weights contained in chapter seventeen-c of this code; and any vehicle registered for a declared gross weight as stated in the application shall be subject to the single-axle load limit set forth in chapter seventeen-c of this code.

(4) Each such applicant shall state whether such vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation, and if so used, or to be used, the applicants shall so certify, and shall, as a condition precedent to the registration of such vehicle, obtain a certificate of convenience, or permit from the public service commission.
(5) A statement under penalty of false swearing that liability insurance is in effect within limits which shall be no less than the requirement of section two, article four, chapter seventeen-d of this code, which statement shall contain the name of the applicant's insurer, the name of the agent or agency which issued the policy and the effective date of the policy, and such other information as may be required by the commissioner of motor vehicles, or that the applicant has qualified as a self-insurer meeting the requirements of section two, article six, chapter seventeen-d of the code and that as a self-insurer he has complied with the minimum security requirements as established in section two, article four of said chapter seventeen-d, or that such applicant has submitted bond or other security approved by the commissioner of motor vehicles which shall provide the equivalent of the policy of insurance herein specified, or that the applicant has submitted the required cash or other securities with the state treasurer as set forth in the provisions of section sixteen, article four of said chapter seventeen-d of this code.

In the case of a periodic use or seasonal vehicle, as defined in section three, article two-a, chapter seventeen-d, the owner may provide, in lieu of other statements required by this section, a statement, under penalty of false swearing, that liability insurance is in effect during the portion of the year the vehicle is in actual use, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, and other information relating to the seasonal use, on a form designed and provided by the department.

The department shall periodically select for verification, on a random sample basis, not fewer than one percent of the statements of liability insurance required by this section. When a statement is selected for verification, the department shall forward the information provided on the statement to the listed insurer. The insurer shall notify the department, within thirty calendar days, whether or not the information is correct.

The department may select for verification any statement of liability insurance submitted by a person who has previously been convicted of violating the provisions of section three, article two-a, chapter seventeen-d of this code, or whose statements of liability insurance have previously been found to be incorrect. The department may also determine the
correctness of information relating to proof of other security satisfying the requirements of this section.

If any person making an application required under the provision of this section, therein knowingly provides false information, false proof of security or a false statement of insurance, or if any person, including an applicant's insurance agent, knowingly counsels, advises, aids or abets another in providing false information, false proof of security, or a false statement of insurance in such application, he is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or be imprisoned in the county jail for a period not to exceed fifteen days, or both fined and imprisoned, and in addition to such fine or imprisonment shall have his operator's or chauffeur's license and vehicle registration suspended for a period of six months.

(6) Such further information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to registration.

(7) Each such application for registration shall be accompanied by the fees hereafter provided, and an additional fee of one dollar for each motor vehicle for which the applicant seeks registration, such fee to be deposited in a special revolving fund for the operation by the department of its functions established by the provisions of article two-a, chapter seventeen-d of this code.

§17A-3-7. Grounds for refusing registration or certificate of title.

The department shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

(1) That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this chapter;

(2) That the applicant fails to present a statement of insurance or proof of other security as required pursuant to the provisions of section three of this article;

(3) That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

(4) That the department has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle or that the
granting of registration or the issuance of certificate of title
would constitute a fraud against the rightful owner or other
person having a valid lien upon such vehicle;
(5) That the registration of the vehicle stands suspended
or revoked for any reason as provided in the motor vehicle
laws of this state;
(6) That the required fee has not been paid.

CHAPTER 17D. MOTOR VEHICLE SAFETY
RESPONSIBILITY LAW.

Article
2A. Security Upon Motor Vehicles.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§ 17D-2A-2. Scope of article.
§ 17D-2A-5. Cancellation of insurance policy; suspension of registra-
tion; minimum policy term.
§ 17D-2A-6. Investigation by duly authorized law-enforcement officer to
include inquiry regarding required security; notice to
department of motor vehicles.
§ 17D-2A-7. Suspension or revocation of license, registration; reinsta-


§ 17D-2A-2. Scope of article.
1 This article applies to the operation of all motor vehicles
2 required to be registered to have proof of security pursuant to
3 article three, chapter seventeen-a of this code, with the
4 exception of motor vehicles owned by the state, any of its
5 political subdivisions or by the federal government.

1 Every owner or registrant of a motor vehicle required to be
2 registered and licensed in this state shall maintain security as
3 hereinafter provided in effect continuously throughout the
4 registration or licensing period except in case of a periodic
5 use or seasonal vehicle, in which case the owner or registrant
6 is required to maintain security upon the vehicle only for the
7 portion of the year the vehicle is in actual use. As used in this
8 section, a periodic use or seasonal vehicle means a
9 recreational vehicle, antique motor vehicle, motorcycle or
10 other motor vehicle which is stored part of the year and used
11 seasonally.
Every nonresident owner or registrant of a motor vehicle, which is operated upon any road or highway of this state, and which has been physically present within this state for more than thirty days during the preceding three hundred sixty-five days, shall thereafter maintain security as hereinafter provided in effect continuously throughout the period such motor vehicle remains within this state.

No person shall knowingly drive or operate upon any road or highway in this state any motor vehicle upon which security is required by the provisions of this article unless such security is in effect.

Such security shall be provided by one of the following methods:

(a) By an insurance policy delivered or issued for the delivery in this state by an insurance company authorized to issue vehicle liability and property insurance policies in this state within limits which shall be no less than the requirements of section two, article four, and section five, article three, chapter seventeen-d of this code, or

(b) By any other method approved by the commissioner of the department of motor vehicles of this state as affording security equivalent to that offered by a policy of insurance, including qualification as a self-insurer under the provisions of section two, article six, chapter seventeen-d, or

(c) By depositing with the state treasurer such cash or other securities in the manner set forth in section sixteen, article four, chapter seventeen-d of this code.

The requirements of this section apply to every registered and licensed vehicle upon the next application for renewal of license following the effective date of this section: Provided, that this article shall not apply to any motor vehicle owned by the state or by a political subdivision of this state, nor to any motor vehicle owned by the federal government.


(a) All insurance carriers transacting insurance in this state shall supply a certificate to the insured or to any person subject to the registration provisions of article three, chapter seventeen-a of this code, certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three, chapter seventeen-a of this code. The certificate shall give its effective date and the effective date of the policy and, unless the policy
is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the commissioner of the department of motor vehicles shall by rule require all motor vehicles covered and all replacement vehicles of similar classification. The certificate must specify for each vehicle listed therein, that there is a minimum liability insurance coverage not less than the requirements of section two, article four, and section five, article three, chapter seventeen-d of this code.

(b) The certificate provided pursuant to the provisions of this section or other proof of insurance shall be carried by the insured in the appropriate vehicle for use as proof of security: Provided, That an insured shall not be guilty of a violation of this subsection (b) if he furnishes proof that such insurance was in effect within five days of being cited for not carrying such certificate or other proof in such vehicle. As used in this section, proof of insurance means a certificate of insurance, an insurance policy, or a mechanically reproduced copy of an insurance policy.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

(a) When a motor vehicle liability insurance policy has been cancelled or terminated, the insurance company shall notify the commissioner of motor vehicles within five days of the effective date of cancellation or termination, unless the insurance company has a statement in writing from the insured that cancellation or termination will not result in the operation of an uninsured vehicle upon the highways of this state.

(b) Within fifteen days of receipt of notice of cancellation or termination of insurance from the insurer, the commissioner of motor vehicles shall give notice of pending suspension of motor vehicle registration to the registrant. The commissioner shall then suspend the registration of such motor vehicle, unless the registrant, within twenty days of the date of the mailing of the notice, furnishes the commissioner of motor vehicles a certificate of insurance or other proof of security: Provided, That the registrant shall be given notice and afforded an opportunity for hearing and judicial review thereof in accordance with the provisions of subsection (c), section seven of this article.

(c) On or before the fifteenth day of January, one thousand
nine hundred eighty-three, and on or before the fifteenth day of January, one thousand nine hundred eighty-four, the commissioner of motor vehicles shall report to the Legislature upon proceedings pursuant to this section. The report shall include the total number of notices received from insurers, the total number of notices of pending suspensions issued, and the total number of cases in which cancellation was found to have resulted in a lapse of coverage upon a vehicle operated upon the highways of this state during the prior year.

(d) No policy of motor vehicle liability insurance issued or delivered for issuance in this state shall be contracted for a period of less than ninety days: Provided, That the insurance commissioner may establish exceptions thereto by rules and regulations to chapter twenty-nine-a.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to department of motor vehicles.  
1 At the time of investigation of a motor vehicle accident in this state by the department of public safety or other law-enforcement agency or when a vehicle is stopped by a law-enforcement officer for reasonable cause, the officer of such agency making such investigation shall inquire of the operators of any motor vehicles involved as to the existence upon such vehicle or vehicles of the proof of insurance or other security required by the provisions of this code and upon a finding by such law-enforcement agency, officer or agent thereof that the security required by the provisions of this article is not in effect, as to any such vehicle, he shall notify the department of motor vehicles of such finding within five days if no citation requiring a court appearance is issued. A defendant, who is charged with a traffic offense that requires an appearance in court, shall present the court at the time of his or her appearance or subsequent appearance with proof that the defendant had security at the time of the traffic offense as required by this article. If, as a result of the defendant's failure to show proof, the court determines that the defendant has violated this article, it shall notify the department of motor vehicles within five days.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.
1 (a) Any owner of a motor vehicle, subject to the provisions
of this article, who fails to have the required security in effect
at the time such vehicle is being operated upon the roads or
highways of this state, shall have his operator's or chauffeur's
license suspended by the commissioner of the department of
motor vehicles for a period of ninety days and shall have his
motor vehicle registration revoked until such time as he shall
present to the department of motor vehicles the proof of
security required by this article.

(b) Any person who knowingly operates a motor vehicle
upon the roads or highways of this state, which does not have
the security required by the provisions of this article, shall
have his operator's or chauffeur's license suspended by the
commissioner of the department of motor vehicles for a
period of ninety days.

(c) No person shall have his operator's or chauffeur's
license or motor vehicle registration suspended or revoked
under any provisions of this section unless he shall first be
given written notice of such suspension or revocation sent by
certified mail, at least twenty days prior to the effective date
of such suspension or revocation, and upon such person's
written request, sent by certified mail, he shall be afforded an
opportunity for a hearing thereupon as well as a stay of the
commissioner's order of suspension or revocation and an
opportunity for judicial review of such hearing as set forth in
the provisions of section fifteen, article three, chapter
seventeen-d of this code. Upon affirmation of the
commissioner's order, the owner or operator, as the case may
be, shall surrender such revoked license and/or registration or
have the same impounded in the manner set forth in the
provisions of section seven, article nine, chapter seventeen-a
of the code.

(d) Such suspended operator's or chauffeur's license shall
be reinstated following the period of suspension upon
compliance with the conditions set forth in this article and
such revoked motor vehicle registration shall be reissued
only upon lawful compliance with the provisions of this
article.


The commissioner of the department of motor vehicles is,
hereby authorized to promulgate such rules and regulations,
in accordance with chapter twenty-nine-a of this code, as he
deems necessary for the administration, operation and
enforcement of the provisions of this article.

1 In addition to any other penalty provided for violation of
2 any provision of this article, any person who violates any
3 provision of this article is guilty of a misdemeanor, and, upon
4 conviction thereof, shall be fined not less than two hundred
5 dollars nor more than five thousand dollars, or imprisoned in
6 the county jail not less than fifteen days nor more than one
7 year, or both fined and imprisoned.
8
9 The arrest procedures authorized in section four, article
10 nineteen, chapter seventeen-c of this code shall apply to the
11 enforcement of the provisions of this article.

ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

§17D-3-5. Requirements as to policy or bond; criminal penalties.

1 (a) No policy or bond shall be effective under section four
2 of this article unless issued by an insurance company or
3 surety company authorized to do business in this state,
4 except as provided in subsection (b) of this section, nor unless
5 such policy or bond is subject, if the accident has resulted in
6 bodily injury or death, to a limit, exclusive of interest and
7 costs, of not less than twenty thousand dollars because of
8 bodily injury to or death of one person in any one accident,
9 and, subject to said limit for one person, to a limit of not less
10 than forty thousand dollars because of bodily injury to or
11 death of two or more persons in any one accident, and, if the
12 accident has resulted in injury to, or destruction of property,
13 to a limit of not less than ten thousand dollars because of
14 injury to or destruction of property of others in any one
15 accident.

16 (b) No policy or bond shall be effective under section four
17 of this article with respect to any vehicle which was not
18 registered in this state or was a vehicle which was registered
19 elsewhere than in this state at the effective date of the policy or
20 bond or the most recent renewal thereof, unless the insurance
21 company or surety company issuing such policy or bond is
22 authorized to do business in this state, or if said company is
23 not authorized to do business in this state, unless it shall
24 execute a power of attorney authorizing the commissioner to
25 accept service on its behalf of notice or process in any action
26 upon such policy or bond arising out of such accident.

27 (c) (1) Upon receipt of notice of such accident from the
28 commissioner, the insurance company or surety company
29 named in such notice or the authorized licensed agent or
representative of the company shall notify the commissioner in such manner as he may require that coverage was in effect at the time of such accident.

(2) Any insurance company, surety company or the agent or representative of such company who provides the notification to the commissioner as required by this subsection, and therein knowingly provides false information, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or be imprisoned in the county jail for a period not to exceed fifteen days, or both fined and imprisoned.

CHAPTER 33. INSURANCE.

Article
6. The Insurance Policy.
6A. Cancellation or Nonrenewal of Automobile Liability Policies.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, shall be issued or delivered in this state to the owner of such vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the department of motor vehicles of this state, unless it shall contain a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his spouse against liability for death or bodily injury sustained, or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by such person:

Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowned automobile is conditioned upon the consent of the owner of such motor
motor vehicle, the word "owner" shall be construed to include the
custodian of such nonowned motor vehicles.

(b) Nor shall any such policy or contract be so issued or
delivered unless it shall contain an endorsement or
provisions undertaking to pay the insured all sums which he
shall be legally entitled to recover as damages from the owner
or operator of an uninsured motor vehicle, within limits
which shall be no less than the requirements of section two,
article four, chapter seventeen-d of the code of West Virginia,
as amended from time to time: Provided, That such policy or
contract shall provide an option to the insured with
appropriately adjusted premiums to pay the insured all sums
which he shall be legally entitled to recover as damages from
the owner or operator of an uninsured motor vehicle up to an
amount of one hundred thousand dollars because of bodily
injury to or death of one person in any one accident, and,
subject to said limit for one person, in the amount of three
hundred thousand dollars because of bodily injury to or death
of two or more persons in any one accident, and in the
amount of fifty thousand dollars because of injury to or
destruction of property of others in any one accident, unless
the insured waives such coverage in writing; and the writing
signed by the insured shall contain the following language:
"The commissioner of the department of motor vehicles of
the state of West Virginia has determined that there are many
operators of motor vehicles from in and out of the state who
do not have liability insurance. For this reason uninsured
motorist coverage is recommended to each and every West
Virginia": Provided, however, That such endorsement or
provisions may exclude the first three hundred dollars of
property damage resulting from the negligence of an
uninsured motorist: Provided further, That such policy or
contract shall provide an option to the insured with
appropriately adjusted premiums to pay the insured all sums
which he shall legally be entitled to recover as damages from
the owner or operator of an uninsured or underinsured motor
vehicle up to an amount not less than limits of bodily injury
liability insurance and property damage liability insurance
purchased by the insured. "Underinsured motor vehicle"
means a motor vehicle with respect to the ownership,
operation, or use of which there is liability insurance
applicable at the time of the accident, but the limits of that
insurance are either (i) less than limits the insured carried for
underinsured motorists' coverage, or (ii) has been reduced by payments to others injured in the accident to limits less than limits the insured carried for underinsured motorist's coverage.

(c) As used in this section, the term "bodily injury" shall include death resulting therefrom, and the term "named insured" shall mean the person named as such in the declarations of the policy or contract and shall also include such person's spouse if a resident of the same household, and the term "insured" shall mean the named insured, and, while resident of the same household, the spouse of any such named insured, and relatives of either, while in a motor vehicle or otherwise, and any person, except a bailee for hire, who uses, with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies or the personal representative of any of the above; and the term "uninsured motor vehicle" shall mean a motor vehicle as to which there is no (i) bodily injury liability insurance and property damage liability insurance both in the amounts specified by section two, article four, chapter seventeen-d, as amended from time to time, or (ii) there is such insurance, but the insurance company writing the same denies coverage thereunder, or (iii) there is no certificate of self-insurance issued in accordance with the provision of section two, article six, chapter seventeen-d of the code of West Virginia. A motor vehicle shall be deemed to be uninsured if the owner or operator thereof be unknown: Provided, That recovery under the endorsement or provisions shall be subject to the conditions hereinafter set forth.

(d) Any insured intending to rely on the coverage required by subsection (b) of this section shall, if any action be instituted against the owner or operator of an uninsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured motor vehicle or in its own name.

Nothing in this subsection shall prevent such owner or operator from employing counsel of his own choice and
taking any action in his own interest in connection with such proceeding.

(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, the insured, or someone in his behalf, in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

(i) Within twenty-four hours after the insured discover, and being physically able to report the occurrence of such accident, the insured, or someone in his behalf, shall report the accident to a police, peace or judicial officer, or to the commissioner of motor vehicles, unless the accident shall already have been investigated by a police officer; and

(ii) Notify the insurance company, within sixty days after such accident, that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unknown and setting forth the facts in support thereof; and, upon written request of the insurance company communicated to the insured not later than five days after receipt of such statement, shall make available for inspection the motor vehicle which the insured was occupying at the time of the accident; and

(iii) Upon trial establish that the motor vehicle, which caused the bodily injury or property damage, whose operator is unknown, was a “hit and run” motor vehicle, meaning a motor vehicle which causes damage to the property of the insured arising out of physical contact of such motor vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of such motor vehicle with the insured or with a motor vehicle which the insured was occupying at the time of the accident. If the owner or operator of any motor vehicle causing bodily injury or property damage be unknown, an action may be instituted against the unknown defendant as “John Doe,” in the county in which the accident took place or in any other county in which such action would be proper under the provisions of article one, chapter fifty-six of this code; service of process may be made by delivery of a copy of the complaint and summons or other pleadings to the clerk of the court in which the action is brought, and service upon the insurance company issuing the policy shall be made as prescribed by law as though such insurance company were a party defendant. The insurance
company shall have the right to file pleadings and take other action allowable by law in the name of John Doe.

(f) An insurer paying a claim under the endorsement or provisions required by subsection (b) of this section shall be subrogated to the rights of the insured to whom such claim was paid against the person causing such injury, death or damage to the extent that payment was made. The bringing of an action against the unknown owner or operator as John Doe or the conclusion of such an action shall not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of, becomes known, from bringing an action against the owner or operator theretofore proceeded against as John Doe. Any recovery against such owner or operator shall be paid to the insurance company to the extent that such insurance company shall have paid the insured in the action brought against such owner or operator as John Doe, except that such insurance company shall pay its proportionate part of any reasonable costs and expenses incurred in connection therewith, including reasonable attorney's fees. Nothing in an endorsement or provision made under this subsection, nor any other provision of law, shall operate to prevent the joining, in an action against John Doe, of the owner or operator of the motor vehicle causing injury as a party defendant, and such joinder is hereby specifically authorized.

(g) No such endorsement or provisions shall contain any provision requiring arbitration of any claim arising under any such endorsement or provision, nor may anything be required of the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

(h) The provisions of subsections (a) and (b) of this section shall not apply to any policy of insurance to the extent that it covers the liability of an employer to his employees under any workmen’s compensation law.

(i) The commissioner of insurance shall formulate and require the use of standard policy provisions for the insurance required by this section, but use of such standard policy provisions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle shall be deemed to be uninsured within the meaning of this section, if there has been a valid
bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or having been placed in receivership. The right of subrogation granted insurers under the provisions of subsection (f) of this section shall not apply as against any person or persons who is or becomes an uninsured motorist for the reasons set forth in this subsection.

(k) Nothing contained herein shall prevent any insurer from also offering benefits and limits other than those prescribed herein, nor shall this section be construed as preventing any insurer from incorporating in such terms, conditions and exclusions as may be consistent with the premium charged.

(l) The insurance commissioner shall review on an annual basis the rate structure for uninsured and underinsured motorist's coverage as set forth in subsection (b) of this section, and shall report to the Legislature on said rate structure on or before the fifteenth day of January, one thousand nine hundred eighty-three, and on or before the fifteenth day of January of each of the next two succeeding years.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing automobile liability insurance in this state insuring a private passenger automobile shall, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the following specified reasons:

(a) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for such policy or any installment thereof;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either
resident in the same household or who customarily operates
an automobile insured under such policy:
(1) Has had his operator's license suspended or revoked
during the policy period including suspension or revocation
for failure to comply with the provisions of article five-a,
chapter seventeen-c of this code, regarding consent for
chemical test for intoxication; or
(2) Is or becomes subject to epilepsy or heart attacks, and
such individual cannot produce a certificate from a physician
testifying to his ability to operate a motor vehicle.
(e) The named insured or any other operator, either
resident in the same household or who customarily operates
an automobile insured under such policy is convicted of or
forfeits bail during the policy period for any of the following:
(1) Any felony or assault involving the use of a motor
vehicle;
(2) Negligent homicide arising out of the operation of a
motor vehicle;
(3) Operating a motor vehicle while under the influence of
alcohol or of any controlled substance or while having an
alcohol concentration in his blood of ten one hundredths of
one percent (.10) or more by weight;
(4) Leaving the scene of a motor vehicle accident in which
the insured is involved without reporting as required by law;
(5) Theft of a motor vehicle or the unlawful taking of a
motor vehicle;
(6) Making false statements in an application for a motor
vehicle operator's license;
(7) A third violation, committed within a period of twelve
months, of any moving traffic violation which constitutes a
misdemeanor, whether or not the violations were repetitious
of the same offense or were different offenses.
Notwithstanding any of the provisions of this section to the
contrary, no insurance company may cancel a policy of
automobile liability insurance without first giving the insured
thirty days' notice of its intention to cancel: Provided, That
cancellation of the insurance policy by the insurance carrier
for failure of consideration to be paid by the insured upon
initial issuance of the insurance policy is effective upon the
expiration of ten days' notice of cancellation to the insured.
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, relating to special officers in the enforcement of chapter seventeen-c, article seventeen, size, weight and load.

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 to read as follows:

ARTICLE 2. OBEEDIENCE TO AND EFFECT OF TRAFFIC LAWS.

§17C-2-3. Enforcement of chapter; designation and bond of special officers; failure to obey police officer or special officers.

(a) It shall be the duty of the department of public safety and its members to enforce the provisions of this chapter and other laws of this state governing the operation of vehicles upon the streets and highways of this state, as defined in section one, article two, chapter seventeen-b of this code, or in other designated places specifically referred to in a given section in this chapter; and it shall be the duty of sheriffs and their deputies and of the police of cities and towns to render to the department of public safety such assistance in the performance of said duties as the superintendent of the department of public safety may require of them.

(b) The West Virginia commissioner of highways is authorized to designate employees of the West Virginia department of highways as special officers to enforce the provisions of this chapter only when such special officers are directing traffic upon bridges and the approaches to bridges which are a part of the state road system when any such bridge needs special traffic direction and the
superintendent of the department of public safety has informed the West Virginia commissioner of highways that he is unable to furnish personnel for such traffic direction. The West Virginia commissioner of highways may also designate certain employees of the West Virginia department of highways serving as members of official weighing crews as special officers to enforce the provisions of article seventeen of this chapter. The West Virginia commissioner of highways shall provide a blanket bond in the amount of ten thousand dollars for all employees designated as special officers, as above provided.

(c) No person shall willfully fail or refuse to comply with a lawful order or direction of any police officer or such special officers invested by law with authority to direct, control or regulate traffic.

(d) No person shall willfully fail or refuse to comply with a lawful order or direction of any special officers designated as such pursuant to the provisions of subsection (b) of this section.

CHAPTER 108
(Com. Sub. for S. B. 406—By Mr. Heck and Mr. Jones)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vehicle size, weight and load; permitting buses and trackless trolleys to operate with a maximum outside width of one hundred two inches; and providing for the exclusion of authorized safety equipment in width determinations for all vehicles.

Be it enacted by the Legislature of West Virginia:

That section two, article seventeen, 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 17. SIZE, WEIGHT AND LOAD.

§17C-17-2. Width of vehicles.

1. (a) The total outside width, exclusive of safety equipment authorized by the United States department of transportation, of any vehicle or the load thereon shall not exceed eight feet, except as otherwise provided in this article.

2. (b) Motor buses and trackless trolley coaches with a total outside width of one hundred two inches, excluding safety equipment authorized by the United States department of transportation, may operate on any highway.

CHAPTER 109

(H. B. 1927—By Mr. Blackwell and Mr. Hatcher)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter seventeen-a of said code by adding thereto a new article, designated article six-a, all relating to antitrust act; restraint of trade; motor vehicle administration; motor vehicle dealers, distributors, wholesalers and manufacturers; definitions; cancellation of dealer contract; notification; circumstances not constituting good cause; burden of proof; notice provisions; reasonable compensation to dealer; payment of compensation; prohibited penalties; where motor vehicle dealer is deceased or incapacitated; relocation; obligations regarding warranties; acceptance of vehicles; risk of loss or damage; indemnity; actions at law; damages; injunctive relief.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLE­SALERS AND MANUFACTURERS.

§17A-6A-1. Legislative finding.


§17A-6A-5. Circumstances not constituting good cause.


§17A-6A-8. Reasonable compensation to dealer.


§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.

§17A-6A-12. Relocation.


§17A-6A-14. Acceptance of vehicles; risk of loss or damage.


§17A-6A-16. Actions at law; damages.

§17A-6A-17. Injunctive relief.

§17A-6A-1. Legislative finding.

The Legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affects the general economy and the public welfare and that in order to promote the public welfare and in the exercise of its police power, it is necessary to regulate motor vehicle dealers, manufacturers, distributors and representatives of vehicle manufacturers and distributors doing business in this state in order to avoid undue control of the independent new motor vehicle dealer by the vehicle manufacturer or distributor and to ensure that dealers fulfill their obligations under their franchises and provide ade­quate and sufficient service to consumers generally.


In accord with the settled public policy of this state to pro­tect the rights of its citizens, it is hereby enacted as the law of West Virginia that each franchise or agreement between a manufacturer or distributor and a dealer who is a resident of
West Virginia, to be performed in substantial part in West Virginia, shall be construed and governed by the laws of the state of West Virginia, regardless of the state in which it was made or executed and of any provision in such franchise or agreement to the contrary.

The provisions of this article shall apply only to any such franchise or agreement which is entered into or renewed subsequent to the effective date of this article.


For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

"Dealer agreement" means the agreement or contract in writing between a manufacturer, distributor and a new motor vehicle dealer, which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase and sale of new motor vehicles and accessories for motor vehicles.

"Designated family member" means the spouse, child, grandchild, parent, brother or sister of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer's ownership interest in the new motor vehicle dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term shall mean only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

"Distributor" means any person, resident or nonresident, who in whole or in part offers for sale, sells or distributes any
new motor vehicle to a new motor vehicle dealer or who main-
tains a factory representative, resident or nonresident, or who
controls any person, resident or nonresident, who in whole or
in part offers for sale, sells or distributes any new motor
vehicle to a new motor vehicle dealer.

“Established place of business” means a permanent, enclosed
commercial building located within this state easily accessible
and open to the public at all reasonable times and at which
the business of a new motor vehicle dealer, including the dis-
play and repair of motor vehicles, may be lawfully carried on
in accordance with the terms of all applicable building codes,
zoning, and other land-use regulatory ordinances.

“Factory branch” means an office maintained by a manu-
facturer or distributor for the purpose of selling or offering
for sale, vehicles to a distributor, wholesaler or new motor
vehicle dealer, or for directing or supervising in whole or in
part factory or distributor representatives. The term includes
any sales promotion organization maintained by a manufac-
turer or distributor which is engaged in promoting the sale of
a particular make of new motor vehicles in this state to new
motor vehicle dealers.

“Factory representative” means an agent or employee of a
manufacturer, distributor or factory branch retained or em-
ployed for the purpose of making or promoting the sale of new
motor vehicles or for supervising or contracting with new
motor vehicle dealers or proposed motor vehicle dealers.

“Good faith” means honesty in fact and the observation of
reasonable commercial standards of fair dealing in the trade.

“Manufacturer” means any person who manufactures or
assembles new motor vehicles; or any distributor, factory
branch or factory representative.

“Motor vehicle” means that term as defined in section one,
article one, chapter seventeen-a of this code, but does not in-
clude a tractor or farm equipment.

“New motor vehicle” means a motor vehicle which is in the
possession of the manufacturer, distributor or wholesaler, or
has been sold only to a new motor vehicle dealer and on
which the original title has not been issued from the new motor vehicle dealer.

"New motor vehicle dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, exchanging or dealing in new motor vehicles and who has an established place of business in this state.

"Person" means a natural person, partnership, corporation, association, trust, estate or other legal entity.

"Proposed new motor vehicle dealer" means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. Proposed motor vehicle dealer does not include a person whose dealer agreement is being renewed or continued.

"Relevant market area" means:

(a) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is greater than thirty thousand, the area within a radius of eight miles of the intended site of the proposed or relocated dealer.

(b) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is not greater than thirty thousand, the area within a radius of fifteen miles of the intended site of the proposed or relocated dealer.


(1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section seven of this article.

(b) Acted in good faith.
(c) Has good cause for the cancellation, termination, non-renewal or discontinuance.

(2) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal or discontinuance under subdivision (c), subsection (1) of this section when both of the following occur:

(a) There is a failure by the new motor vehicle dealer to comply with a provision of the dealer agreement and the provision is both reasonable and of material significance to the relationship between the manufacturer or distributor and the new motor vehicle dealer and (b) the manufacturer or distributor first acquired actual or constructive knowledge of the failure not more than two years prior to the date on which notification was given pursuant to section seven of this article.

(3) If the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause shall exist for the purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when the new motor vehicle dealer failed to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure.

(b) The notification stated that the notice of failure of performance was provided pursuant to this article.

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement.

(d) The failure continued for more than one hundred eighty days after the date notification was given pursuant to subdivision (a) of this subsection.

§17A-6A-5. Circumstances not constituting good cause.

Notwithstanding any agreement, the following alone shall not constitute good cause for the termination, cancellation,
nonrenewal or discontinuance of a dealer agreement under subdivision (c), subsection (1), section four of this article:

(a) A change in ownership of the new motor vehicle dealer's dealership. The subdivision does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

(b) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor: Provided, That the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with the reasonable facilities' requirements of the manufacturer or distributor.

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son or daughter: Provided, That the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.


For each termination, cancellation, nonrenewal or discontinuance, the manufacturer or distributor shall have the burden of proof for showing that he has acted in good faith, that the notice requirement has been complied with, and that there
was good cause for the termination, cancellation, nonrenewal or discontinuance.


Notwithstanding any agreement, prior to the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the manufacturer or distributor shall furnish notice of the termination, cancellation, nonrenewal or discontinuance to the new motor vehicle dealer as follows:

(a) Except as provided in subdivision (c) or (d), notice shall be made not less than ninety days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance.

(b) Notice shall be by certified mail to the new motor vehicle dealer and shall contain the following:

(i) A statement of intention to terminate, cancel, not renew or discontinue the dealer agreement.

(ii) A statement of the reasons for the termination, cancellation, nonrenewal or discontinuance.

(iii) The date on which the termination, cancellation, nonrenewal or discontinuance takes effect.

(c) Notwithstanding subdivision (a), notice shall be made not less than fifteen days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance for any of the following reasons:

(i) Insolvency of the new motor vehicle dealer, or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law.

(ii) Failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for seven consecutive business days.

(iii) Conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of one year under the law under which
the dealer was convicted, or the crime involved theft, dishonesty, or false statement regardless of the punishment.

(iv) Revocation of any license under which the new motor vehicle dealer is required to have to operate a dealership.

(v) A fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor, which is material to the dealer agreement.

(d) Notwithstanding subdivision (a) notice shall be made not less than twelve months prior to the effective date of a termination, cancellation, nonrenewal or discontinuance if a manufacturer or distributor discontinues production of the new motor vehicle dealer's product line or discontinues distribution of the product line in this state.

§17A-6A-8. Reasonable compensation to dealer.

(1) Upon the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) New current model year motor vehicle inventory purchased from the manufacturer or distributor, which has not been materially altered, substantially damaged, or driven for more than three hundred miles.

(b) Supplies and parts inventory purchased from the manufacturer or distributor and listed in the manufacturer's or distributor's current parts catalog.

(c) Equipment, furnishings and signs purchased from the manufacturer or distributor.

(d) Special tools purchased from the manufacturer or distributor within three years of the date of termination, cancellation, nonrenewal or discontinuance.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of a dealer agreement by the manufacturer or distributor, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business
for a period of one year from the effective date of termi-
nation, cancellation, nonrenewal or discontinuance, or the
remainder of the lease, whichever is less. However, the
payment required by this subsection shall not apply to any
termination, cancellation, nonrenewal or discontinuance made
pursuant to subdivision (c), subsection (1), section four of
this article.


1 (1) Compensation for new current model year motor ve-
hicle inventory under subdivision (a), subsection (1), section
eight of this article shall be paid, if possible, within thirty
days after the effective date of the termination, cancellation,
nonrenewal or discontinuance. Compensation for items of
personal property required by subdivisions (b), (c) and (d),
subsection (1), section eight of this article, shall be paid within
ninety days after the effective date of the termination, can-
cellation, nonrenewal or discontinuance, provided that the
new motor vehicle dealer has met all reasonable requirements
of the dealer agreement with respect to the return of the re-
purchased personal property, including providing clear title.

(2) Reasonable compensation pursuant to subdivision (a),
subsection (1), section eight of this article shall be not less
than the new motor vehicle dealer's net acquisition cost.
Reasonable compensation pursuant to subdivision (b), sub-
section (1), section eight of this article shall be the amount
stated in the manufacturer's or distributor's current parts
price list. Reasonable compensation pursuant to subdivisions
(c) and (d), subsection (1), section eight of this article shall
be the fair market value of the personal property.

(3) In the event payment is not made within ninety days
as provided in subsection (1), interest shall accrue thereafter
on all amounts due the new motor vehicle dealer at a rate of
twelve percent per annum.


1 (1) A manufacturer or distributor shall not require any new
motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, part
or accessory thereof, equipment, or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor.

(b) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor.

(c) Participate monetarily in any advertising campaign or contest or purchase any promotional materials, display devices or display decorations or materials at the expense of the new motor vehicle dealer.

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer’s violation of any terms or provisions of the dealer agreement shall not constitute a violation of this article.

(e) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria.

(f) Refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer.

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable.
(h) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this article, or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer.

(2) A manufacturer or distributor shall not do any of the following:

(a) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor.

(b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor.

(c) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone or region, whichever geographical area is the smallest.

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to, the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer’s receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer’s inventory which were subject to the price reductions. A price difference applicable to new model or series
motor vehicles at the time of the introduction of the new
models or the series shall not be considered a price increase or
price decrease. This subdivision shall not apply to price chang-
es caused by the following:

(i) The addition to a motor vehicle of required or optional
equipment pursuant to state or federal law.

(ii) In the case of foreign made vehicles or components,
revaluation of the United States dollar.

(iii) Any increase in transportation charges due to an in-
crease in rates charged by a common carrier and transporters.

(e) Offer any refunds or other types of inducements to any
dealer for the purchase of new motor vehicles of a certain line
make to be sold to this state or any political subdivision of this
state without making the same offer available upon request to
all other new motor vehicle dealers of the same line make.

(f) Release to an outside party, except under subpoena or
in an administrative or judicial proceeding to which the new
motor vehicle dealer or the manufacturer or distributor are
parties, any business, financial or personal information which
has been provided by the dealer to the manufacturer or dis-
tributor, unless the new motor vehicle dealer gives his or her
written consent.

(g) Deny a new motor vehicle dealer the right to associate
with another new motor vehicle dealer for any lawful purpose.

(h) Establish a dealership which would unfairly compete
with a new motor vehicle dealer of the same line make operating
under a dealer agreement with the manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not be considered to be unfairly competing if the manufacturer or distributor is:

(i) Operating a dealership temporarily for a reasonable
period.

(ii) Operating a dealership which is for sale at a reasonable
price.

(iii) Operating a dealership with another person who has
made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions.

(i) Unreasonably withhold consent to the sale, transfer or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state.

(j) Fail to respond in writing to a request for consent to a sale, transfer or exchange of a dealership within sixty days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the sixty days shall be deemed to be consent.

(k) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership.

(2) A manufacturer or distributor, either directly or through any subsidiary, shall not terminate, cancel, fail to renew, or discontinue any lease of the new motor vehicle dealer’s established place of business except for a material breach of the lease.

§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.

(1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within one hundred twenty days after the dealer’s death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause.
(2) The manufacturer or distributor may request from a
designated family member such personal and financial data as
is reasonably necessary to determine whether the existing
dealer agreement should be honored. The designated family
member shall supply the personal and financial data promptly
upon the request.

(3) If a manufacturer or distributor believes that good
cause exists for refusing to honor the succession, the manu­
facturer or distributor may, within sixty days after receipt
of the notice of the designated family member’s intent
to succeed the dealer in the ownership and operation of
the dealership, or within sixty days after the receipt of
the requested personal and financial data, serve upon the
designated family member notice of its refusal to approve the
succession.

(4) The notice of the manufacturer or distributor provided
in subsection (3) shall state the specific grounds for the
refusal to approve the succession and that discontinuance of
the agreement shall take effect not less than ninety days after
the date the notice is served.

(5) If notice of refusal is not served within the sixty days
provided for in subsection (3), the dealer agreement shall
continue in effect and shall be subject to termination only as
otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle
dealer from designating any person as his or her successor
by written instrument filed with the manufacturer or dis­
tributor, and if such an instrument is filed, it alone shall
determine the succession rights to the management and opera­
tion of the dealership.

§17A-6A-12. Relocation.

(1) As used in this section, “relocate” and “relocation”
shall not include the relocation of a new motor vehicle dealer
within two miles of its established place of business or the
relocation of a new motor vehicle dealer to a site within the
area of sales responsibility assigned to that dealer by the
manufacturing branch or distributor unless the relocation site
is within six miles of another dealer of the same line make.

(2) Before a manufacturer or distributor enters into a
dealer agreement establishing or relocating a new motor vehicle
dealer within a relevant market area where the same line
make is represented, the manufacturer or distributor shall give
written notice to each new motor vehicle dealer of the same
line make in the relevant market area of its intention to es-
tablish an additional dealer or to relocate an existing dealer
within that relevant market area.

(3) Within thirty days after receiving the notice provided
for in subsection (2), or within thirty days after the end of
any appeal procedure provided by the manufacturer or dis-
tributor, a new motor vehicle dealer of the same line make
within the affected relevant market area may bring a declara-
tory judgment action in the circuit court for the county in
which the new motor vehicle dealer is located to determine
whether good cause exists for the establishing or relocating
of a proposed new motor vehicle dealer. Once an action has
been filed, the manufacturer or distributor shall not establish
or relocate the proposed new motor vehicle dealer until the
circuit court has rendered a decision on the matter. An action
brought pursuant to this section shall be given precedence
over all other civil matters on the court's docket.

(4) This section shall not apply to the reopening in a rele-
vant market area of a new motor vehicle dealer that has been
closed within the preceding two years if the established place
of business of the new motor vehicle dealer is within two
miles of the established place of business of the closed new
motor vehicle dealer.

(5) In determining whether good cause exists for establishing
or relocating an additional new motor vehicle dealer for the
same line make, the court shall take into consideration the
existing circumstances, including, but not limited to, the fol-
lowing:

(a) Permanency of the investment.

(b) Effect on the retail new motor vehicle business and the
consuming public in the relevant market area.
(c) Whether it is injurious or beneficial to the public welfare.

(d) Whether the new motor vehicle dealers of the same line make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line make in the market area, including the adequacy of motor vehicle sales and qualified service personnel.

(e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.

(g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.


(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer’s obligations for preparation, delivery and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work and service, and the time allowance for the performance of the work and service.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of a dealer for warranty labor be less than the rates charged by the dealer for like
service to retail customers for nonwarranty service and repairs, provided that such rates are reasonable.

(3) A manufacturer or distributor shall not do any of the following:

(a) Fail to perform any warranty obligation.

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects.

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for two years after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent or unsubstantiated claim.

§17A-6A-14. Acceptance of vehicles; risk of loss or damage.

(1) Notwithstanding the terms, provisions or conditions of any agreement, a new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser. Acceptance by the new motor vehicle dealer shall occur when the new motor vehicle dealer signs a delivery receipt for any motor vehicle.

(2) Notwithstanding the terms, provisions or conditions of any agreement, the manufacturer or distributor is liable for
all damages to motor vehicles before delivery to a carrier or transporter.

(3) The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation, and the carrier. In all other instances, the manufacturer or distributor is liable for new motor vehicle damage.

(4) If the new motor vehicle dealer rejects a new motor vehicle pursuant to this section, the manufacturer or distributor shall credit the dealer’s account within ten business days after receipt of the notice of rejection.


Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers against any judgment for damages, including court costs and attorney’s fees, arising solely out of complaints, claims or actions which relate to the manufacture, assembly or design of a new motor vehicle, or other functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, or any damages to merchandise occurring in transit to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim or action.

§17A-6A-16. Actions at law; damages.

(1) If a manufacturer or distributor terminates, cancels, fails to renew or discontinues a dealer agreement for other than good cause as defined in this article, the new motor vehicle dealer may bring an action against the manufacturer or distributor to recover actual damages reasonably incurred as a result of the termination, cancellation, failure or discontinuance.

(2) A manufacturer or distributor who violates this article
is liable for all damages sustained by a new motor vehicle
dealer as a result of the violation.

(3) A manufacturer or distributor or new motor vehicle
dealer may bring an action for declaratory judgment for
determination of any controversy arising pursuant to this
article.

(4) A manufacturer or distributor who violates this article
shall be liable for all court costs and reasonable attorney's
fees incurred by the dealer.

§17A-6A-17. Injunctive relief.

Upon proper application to the circuit court, a manu-
facturer or distributor or new motor vehicle dealer may
obtain appropriate injunctive relief against termination, can-
cellation, nonrenewal or discontinuance of a dealer agree-
ment or any other violation of this article. The court may
grant injunctive relief or a temporary restraining order with-
out bond.

CHAPTER 110

(Com. Sub. for H. B. 1401—By Mr. Blackwell and Mr. Williams)

[Passed February 25, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter
eight of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to powers and duties with
respect to ordinances and ordinance procedures; and permit-
ting municipality to file for execution before the clerk of the
circuit court to collect fines assessed by municipal judge
against nonresidents of the municipality.

Be it enacted by the Legislature of West Virginia:

That section one, article eleven, 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 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines against nonresidents.

To carry into effect the powers and authority conferred upon any municipality or its governing body by the provisions of this chapter or any past or future act of the Legislature of this state, the governing body shall have plenary power and authority to make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations, not contrary to the constitution and laws of this state; and, for a violation thereof, to prescribe reasonable penalties in the form of fines, forfeitures and imprisonment in the county jail or the place of imprisonment in such municipality, if there be one, for a term not exceeding thirty days. Such fines, forfeitures and imprisonment shall be recovered, imposed or enforced under the judgment of the mayor of such municipality or the individual lawfully exercising his functions, or the police court judge or municipal court judge of a city, if there be one, and may be suspended upon such reasonable conditions as may be imposed by such mayor, other authorized individual or judge. Any municipality may also maintain a civil action in the name of the municipality in the circuit court of the county in which the municipality or the major portion of the territory thereof is located to obtain an injunction to compel compliance with, or to enjoin a violation or threatened violation of, any ordinance of such municipality, and such circuit court shall have jurisdiction to grant the relief sought. A certified transcript of a judgment for a fine rendered by a municipal court may be filed in the office of the clerk of a circuit court and docketed in the judgment lien book kept in the office of the clerk of the county commission in the same manner and with the same effect as the filing and docketing of a certified transcript of judgment rendered by a magistrate court as provided for in section two, article six, chapter fifty of this code. The judgment may include costs assessed against the defendant.
34 Execution shall be by fieri facias issued by the clerk of the circuit court in the same manner as such writs are issued on judgments for a fine rendered by circuit courts or other courts of record under the provisions of section eleven, article four, chapter sixty-two of this code.

CHAPTER 111

(Com. Sub. for H. B. 1362—By Mr. Hendricks)

[Passed March 11, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to the general powers of municipalities, their governing bodies, officers and employees; and limiting the power of such municipalities to regulate the ownership of any revolver, pistol, rifle or shotgun or the ammunition used therewith.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOV¬ERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5a. Limitations upon municipalities' power to restrict ownership of certain weapons and ammunition.

1 The provisions of section five of this article notwithstanding, neither a municipality nor the governing body of any municipality shall have the power to limit the right of any person to own any revolver, pistol, rifle or shotgun or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of such ammunition. Nothing
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8 herein shall in any way impair the authority of any municipality, or the governing body thereof, to enact any ordinance or
9 resolution respecting the power to arrest, convict and punish
10 any individual under the provisions of subdivision (16), sec-
11 tion five of this article or from enforcing any such ordinance
12 or resolution.

CHAPTER 112
(Com. Sub. for H. B. 1159—By Mr. Farley)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty, twenty-three-a, twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen-d, article three, chapter thirty-three of said code, all relating to correcting grammatical and technical errors; eliminating obsolete code provisions concerning sums paid to members of municipal policemen's and firemen's pension and relief fund eligible for disability pension benefits prior to the first day of July, one thousand nine hundred eighty-one; providing for eligibility for retirement pension benefits for members of municipal policemen's and firemen's pension and relief funds whose service was interrupted, prior to the first day of July, one thousand nine hundred eighty-one, by duty with the United States armed forces; specifying six percent interest as interest to be paid whenever return of contributions occurs and is to be made to a nondependent beneficiary or the estate; allowing service credit for members of armed reserve units, national guard units and air national guard units when their units are called into active duty for one year or more; and requiring the state auditor to authorize the distribution of revenues from the municipal pensions and protection fund.

Be it enacted by the Legislature of West Virginia:

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


CHAPTER 8. MUNICIPAL CORPORATIONS.

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.


§8-22-23a. Eligibility for total and temporary disability pensions and total and permanent disability pensions.


The board of trustees for each pension and relief fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary. All of the following standards must be met:

(a) An actuarial valuation report shall be prepared at least once every three years commencing with the later of (1) the first day of July, one thousand nine hundred eighty-three, or (2) three years following the most recently prepared actuarial valuation report: Provided, That this most recently prepared actuarial valuation report meets all of the standards of this section.

(b) The actuarial valuation report shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be at-
tained, (2) the progress being made toward realization of
the financial objective, (3) recent changes in the nature of
the fund, benefits provided, or actuarial assumptions or
methods, (4) the frequency of actuarial valuation reports
and the date of the most recent actuarial valuation report,
(5) the method used to value fund assets, (6) the extent to
which the qualified actuary relies on the data provided and
whether the data was certified by the fund's auditor or
examined by the qualified actuary for reasonableness, (7) a
description and explanation of the actuarial assumptions and
methods, and (8) any other information the qualified actuary
feels is necessary or would be useful in fully and fairly
disclosing the actuarial condition of the fund.

(c) After the thirtieth day of June, one thousand nine
hundred eighty-three, and thereafter, the financial objective
of each municipality shall not be less than to contribute to
the fund annually an amount which, together with the con-
tributions from the members and the allocable portion of
the state premium tax fund for municipal pension and relief
funds established under section fourteen-d, article three, chap-
ter thirty-three of this code and other income sources as
authorized by law, will be sufficient to meet the normal cost
of the fund and amortize any actuarial deficiency over a
period of not more than forty years: Provided, That for those
funds in existence on the first day of July, one thousand
nine hundred eighty-one, its actuarial deficiency, if any, shall
not be amortized over a period longer than that which
remains under its current schedule. For purposes of deter-
mining this minimum financial objective, (1) the value of
the fund's assets shall be determined on the basis of any
reasonable actuarial method of valuation which takes into
account fair market value, and (2) all costs, deficiencies,
rate of interest, and other factors under the fund shall be
determined on the basis of actuarial assumptions and methods
which, in aggregate, are reasonable (taking into account
the experience of the fund and reasonable expectations)
and which, in combination, offer the qualified actuary's best
estimate of anticipated experience under the fund. If as a
result of this legislation a municipality's financial commitment
to the fund is materially increased, the municipality may elect
to phase in this increase over the five fiscal years commencing
the first day of July, one thousand nine hundred eighty-
three.

(d) For purposes of this section the term "qualified
actuary" means only an actuary who is a member of the
Society of Actuaries or the American Academy of Actuaries.
The qualified actuary shall be designated a fiduciary and
shall discharge his duties with respect to a fund solely in
the interest of the members and member's beneficiaries of
that fund. In order for the standards of this section to be
met, the qualified actuary shall certify that the actuarial
valuation report is complete and accurate and that in his
opinion the technique and assumptions used are reasonable
and meet the requirements of this section of this article.

(e) The cost of the preparation of the actuarial valua-
tion report shall be paid by the fund.

§8-22-23a. Eligibility for total and temporary disability pensions
and total and permanent disability pensions.

(a) All members applying for total and temporary or total
and permanent disability benefits after the thirtieth day of
June, one thousand nine hundred eighty-one, shall be examined
by at least two physicians under the direction of the staff at
Marshall University, West Virginia University, Morgantown
or West Virginia University, Charleston: Provided, That if
such member's medical condition cannot be agreed upon by
two such physicians, a third physician shall examine such
member. Such medical examination shall include the review of
such member's medical history. The expense of the member's
transportation to such medical examination and the expense of
the medical examination shall be paid by the board of trustees,
such medical expense shall not exceed the reasonable and
customary charges for such services.

(b) Effective for members becoming eligible for total and
temporary disability benefits after the thirtieth day of June,
one thousand nine hundred eighty-one, initially or previously
under this subsection allowance for initial or additional total
and temporary disability payments, the amount thereof to be
determined as specified in section twenty-four of this article,
shall be paid to such member during such disability for a period not exceeding twenty-six weeks if after a medical examination in accordance with subsection (a) of this section of this article, two examining physicians report in writing to the board of trustees that (1) such member has become so totally, physically or mentally disabled, from any reason, as to render such member totally, physically or mentally, incapacitated for employment as a police officer or firefighter and (2) it has not been determined if such disability is permanent or it has been determined that such disability may be alleviated or eliminated if such member follows a reasonable medical treatment plan or reasonable medical advice: Provided, That in any event a member is not eligible for total and temporary disability payments following the fourth consecutive twenty-six week period of total and temporary disability unless such subsequent disability results from a cause unrelated to the cause of the four previous periods of total and temporary disability. During such two-year period of such total and temporary disability, such department is required to restore such member to his former position in such department at any time he is determined to no longer be disabled: Provided, That the department may refill, on a temporary basis, the position vacated by such member after the first twenty-six weeks of his temporary disability.

(c) Effective for members becoming eligible for total and permanent disability benefits initially under this subsection or becoming eligible for total and temporary disability benefits under subsection (b) of this section after the thirtieth day of June, one thousand nine hundred eighty-one, allowance for total and permanent disability payments, the amount thereof to be determined as specified in section twenty-four of this article, shall be paid to such member after a medical examination in accordance with subsection (a) of this section, two examining physicians report in writing to the board of trustees that such member has become so totally, physically or mentally, and permanently disabled, as a proximate result of service rendered in the performance of his duties in such department, as to render such member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter or, if such member has been a member of either
of such departments for a period of not less than five consecutive years preceding such disability, such member has become so totally, physically or mentally, and permanently disabled, from any reason other than service rendered in the performance of his duties in such department, as to render such member totally, physically or mentally, and permanently incapacitated for employment as a police officer or firefighter. The phrase "totally, physically or mentally, and permanently disabled" shall not be construed to include a medical condition which may be corrected if such member follows a reasonable medical treatment plan or reasonable medical advice.

(d) Effective for members becoming eligible for total and temporary disability benefits after the thirtieth day of June, one thousand nine hundred eighty-one, under the provisions of subsection (b) of this section, any payments for total and temporary disability for a period during such disability not exceeding twenty-six weeks shall cease at the end of such twenty-six week period under the following conditions:

(1) Such member fails to be examined as provided in subsection (a) of this section or (2) such member is examined or reexamined as provided in subsection (a) and two examining physicians report to the board of trustees that such member's medical condition does not meet the requirements of subsection (b) or (c) of this section. Effective for members becoming eligible for total and temporary disability benefits after the thirtieth day of June, one thousand nine hundred eighty-one, under subsection (b) of this section, subsequent to such member's receipt of total and temporary disability payments for a period of two years, such payments shall cease at the end of such two-year period under the following conditions:

(1) Such member fails to be examined as provided in subsection (a) of this section of this article or (2) such member is examined or reexamined as provided in subsection (a) and two examining physicians report to the board of trustees that such member's medical condition does not meet the requirements of subsection (c) of this section.


(a) The monthly sum to be paid to each member eligible
for disability under the provisions of section twenty-three-a of this article, shall be equal to sixty percent of the monthly salary or compensation being received by such member, at the time he is so disabled, or the sum of two hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after the first day of July, one thousand nine hundred eighty-one, under the provisions of section twenty-three-a of this article, as a proximate result of service rendered in the performance of his duties within such departments, his monthly disability payment as provided in subsection (a) of this section shall not, when aggregated with the monthly amount of state workmen's compensation, result in such disabled member receiving a total monthly income from such sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which such member held within such department at the time of his disability. Lump sum payments of state workmen's compensation benefits shall not be considered for purposes of this subsection unless such lump sum payments represent commuted values of monthly state workmen's compensation benefits.


(a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability; and on such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon his retirement or upon his attaining the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three periods
(b) Any member of any such department who is entitled to a retirement pension under the provisions of subsection (a) of this section and who has been in the honorable service of such department for more than twenty years at the time of his retirement, as herein provided, shall, in addition to the sixty percent authorized in said subsection (a), receive one additional percent, to be added to the sixty percent, per each year served in excess of said twenty years, up to a maximum of ten additional percent.

(c) Any member of any such department whose service has been interrupted by duty with the armed forces of the United States as provided in section twenty-seven of this article prior to the first day of July, one thousand nine hundred eighty-one, shall be eligible for retirement pension benefits immediately upon retirement, regardless of his age, if he shall otherwise be eligible for such retirement pension benefits.

(d) Any member of a paid police or fire department shall be retired at the age of sixty-five years in the manner provided in this subsection. When a member of the paid police or fire department shall have reached the age of sixty-five years, the said board of trustees shall notify the mayor of this fact, within thirty days of such member's sixty-fifth birthday; and the mayor shall cause such sixty-five-year-old member of the paid police or fire department to be retired within a period of not more than thirty additional days. Upon retirement under the provisions of this subsection (d), such member shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three periods falling within the member's final five years of employment with such department, in which falling within the member's final five years of employment with such department, in which such member received his highest salary or compensation while a member of the department, or an amount of two hundred dollars per month, whichever shall be greater.
such member received his highest salary or compensation
while a member of the department, or an amount of two
hundred dollars per month, whichever shall be greater, and if
such member has been employed in said department for more
than twenty years, the provisions of subsection (b) of this sec-
tion shall apply.

(e) It shall be the duty of each member of a paid police
or fire department at the time a fund is hereafter established
to furnish the necessary proof of his date of birth to the said
board of trustees, as specified in section twenty-three of this
article, within a reasonable length of time, said length of time
to be determined by the said board of trustees; and then the
board of trustees and the mayor shall proceed to act in the
manner provided in subsection (d) of this section and shall
cause all members of the paid police or fire department who
are over the age of sixty-five years to be retired in not less
than sixty days from the date the fund is established. Upon
retirement under the provisions of this subsection (e), such
member, whether he has been employed in said department for
twenty years or not, shall receive retirement pension benefits
payable in twelve monthly installments for each year of the
remainder of his life, in an amount equal to sixty percent of
such member's average annual salary or compensation received
during the three twelve-consecutive-month periods, not neces-
sarily consecutive, each of such three periods beginning with
the same calendar month of different years and all such three
periods falling within the member's final five years of em-
ployment with such department, in which such member re-
ceived his highest salary or compensation while a member of
the department, or an amount of two hundred dollars per
month, whichever shall be greater, and if such member has
been employed in said department for more than twenty years,
the provisions of subsection (b) of this section shall apply.


(a) In case:

(1) Any member of a paid police or fire department who
has been in continuous service for more than five years dies
from any cause other than as specified in subsection (b) of
this section before retirement on a disability pension under
the provisions of, prior to the first day of July, one thou-
sand nine hundred eighty-one, section twenty-four of this
article or, after the thirtieth day of June, one thousand
nine hundred eighty-one, sections twenty-three-a and twenty-
four of this article or a retirement pension under the pro-
visions of subsection (a) or both subsections (a) and (b), sec-
tion twenty-five of this article, leaving in either case sur-
viving a dependent spouse, or any dependent child or chil-
dren under the age of eighteen years, or dependent father
or mother or both, or any dependent brothers or sisters or
both under the age of eighteen years; or

(2) Any former member of any such department who is on a
disability pension prior to the first day of July, one thou-
sand nine hundred eighty-one, under section twenty-four of
this article, or after the thirtieth day of June, one thousand
nine hundred eighty-one, under sections twenty-three-a and
twenty-four of this article, or is receiving or is entitled to
receive retirement pension benefits under the provisions of
subsection (a) or both subsections (a) and (b), section
twenty-five of this article, shall die from any cause other
than as specified in subsection (b) of this section leaving in
either case surviving a dependent spouse to whom the marriage
took place prior to the date of such member's retirement on a
disability pension or a retirement pension, or any dependent
child or children under the age of eighteen years who were
born prior to or within ten months after the date of such mem-
ber's retirement on a disability pension or a retirement pension,
or dependent father or mother or both, or any dependent
brothers or sisters or both under the age of eighteen years; then
in any of the cases set forth above in (1) and (2) the board
of trustees of such pension and relief fund shall, immediately
following the death of such member, pay to or for each of such
entitled surviving dependents the following pension benefits
viz.: To such dependent spouse, until death or remarriage, a
sum per month equal to thirty percent of such member's average
monthly salary or compensation received during the three
twelve-consecutive-month periods, not necessarily consecutive,
each of such three periods beginning with the same calendar
month of different years and all such three periods falling
within the member's final five years of employment with such
department, in which such member received his highest salary
or compensation while a member of the department, herein-
after for convenience referred to in this section as "monthly
average," or an amount of one hundred dollars per month,
whichever shall be greater; to each such dependent child a sum
per month equal to ten percent of such monthly average, or
the sum of thirty dollars per month for each such child, whichever shall be greater, until such child shall attain the age of
eighteen years or marry, whichever first occurs; to each such
dependent orphaned child a sum per month equal to fifteen
percent of such monthly average, or the sum of forty-five
dollars per month for each such child, whichever shall be
greater, until such child shall attain the age of eighteen
years or marry, whichever first occurs; to each such
dependent father or mother a sum per month for each equal
to ten percent of such monthly average, or the sum of thirty
dollars per month for each such father and mother, whichever shall be greater; to each such dependent brother or sister the sum of five dollars per month until such individual shall attain the age of eighteen years or marry, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed thirty dollars per month;
but if at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments: Provided, That in no case shall the payments to the surviving spouse and children be cut below sixty-five per-
cent of the total amount to be paid to all dependents.

(b) The dependent spouse, child or children, or dependent
father or mother, or dependent brothers or sisters, of any such member who shall die by reason of service rendered in the performance of such member's duties shall, regardless of the length of such member's service and irrespective of whether such member was or was not entitled to receive or was or was not receiving disability pension or temporary disability payments at the time of his death, receive the death benefits provided for in subsection (a) of this section, and if such member had less than three years' service at the time of his
death, the monthly average shall be computed on the basis of the actual number of years of service.

(c) If a member dies without leaving a dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, his contributions to the fund plus six percent interest shall be refunded to his named beneficiary or, if no beneficiary has been named, to his estate to the extent that such contributions plus interest exceed any disability or retirement benefits that he may have received before his death.

(d) The provisions of this section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits herein authorized to be made, all the provisions hereof and benefits provided for hereunder being expressly subject to such subsequent legislative enactments as may provide for any change, modification or elimination of the beneficiaries or benefits specified herein.


(a) In determining the years of service of a member in a paid police or fire department for the purpose of ascertaining certain disability pension benefits, all retirement pension benefits and certain death benefits, the following provisions shall be applicable:

(1) Absence from the service because of sickness or injury for a period of two years or less shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been required to or shall at any future time be required to enter the armed forces of the United States by conscription, by reason of being a member of some reserve unit of the armed forces or a member of the West Virginia national guard or air national guard, whose reserve unit or guard unit is called into active duty for one year or
more, or who enlists in one of the armed forces of the United
States during hostilities, and who upon receipt of an honorable
discharge from such armed forces presents himself for re-
sumption of duty to his appointing municipal official within
six months from his date of discharge, and is accepted by the
pension board's board of medical examiners as being mentally
and physically capable of performing his required duties as a
member of such paid police or fire department, shall be given
credit for continuous service in said paid police or fire
department, and his rights shall be governed as herein pro-
vided. No member of a paid police or fire department shall
be required to pay the monthly assessment as now required
by law, during his period of service in the armed forces of
the United States.

(b) As to any former member of a paid police or fire
department receiving disability pension benefits or retire-
ment pension benefits from a policemen's or firemen's pen-
sion and relief fund, on the effective date of this article, the
following provisions shall govern and control the amount of
such pension benefits:

(1) A former member who on June thirtieth, one thousand
nine hundred sixty-two, was receiving disability pension ben-
efits or retirement pension benefits from a policemen's or
firemen's pension and relief fund, shall continue to receive
pension benefits but on and after July one, one thousand nine
hundred seventy-one, such pension benefits shall be in the
amount of two hundred dollars per month; and

(2) A former member who became entitled to disability
pension benefits or retirement pension benefits on or after
July one, one thousand nine hundred sixty-two, shall con-
tinue to receive pension benefits but on and after July one,
one thousand nine hundred seventy-one, shall receive the
disability pension benefits or retirement pension benefits
provided for in section twenty-four or section twenty-five of
this article, as the case may be.

(c) As to any dependent spouse, child or children, or de-
dependent father or mother, or dependent brothers or sisters,
of any former member of a paid police or fire department,
receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such death benefits:

(1) A dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who on June thirty, one thousand nine hundred sixty-two, was receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, shall continue to receive death benefits but on and after July one, one thousand nine hundred seventy-one, such death benefits shall be in the following amounts: To a dependent spouse, until death or remarriage, the sum of one hundred dollars per month; to each dependent child the sum of thirty dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent orphaned child the sum of forty-five dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent father and mother the sum of thirty dollars per month for each; to each dependent brother or sister the sum of five dollars per month, until such individual shall attain the age of eighteen years or marry, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed thirty dollars per month; but if at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments: Provided, That in no case shall the payments to the surviving spouse and children be cut below sixty-five percent of the total amount to be paid to all dependents;

(2) A dependant spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who became eligible for death benefits on or after July one, one thousand nine hundred sixty-two, shall continue to receive death benefits but on and after July one, one thousand nine hundred seventy-one, shall receive the death benefits provided for in section twenty-six of this article.
(d) A former member who is receiving disability pension benefits on the thirtieth day of June, one thousand nine hundred eighty-one, shall continue to receive disability pension benefits provided for in section twenty-four of this article.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and additional revenue for volunteer and part volunteer fire companies and departments, there is hereby levied and imposed, on and after the first day of January, one thousand nine hundred eighty-two, an additional premium tax equal to one percent of gross direct premiums collected, less premiums returned to policyholders because of cancellation of policies, for fire insurance and casualty insurance policies. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of the additional tax.

All moneys collected from this additional tax shall be received by the commissioner and paid by him into a special account in the state treasury, designated the municipal pensions and protection fund. The net proceeds of this tax after appropriation thereof by the Legislature, shall be distributed in accordance with the provisions of subsection (c) of this section.

(b) Before the first day of August, one thousand nine hundred eighty-three, and before the first day of August of each calendar year thereafter, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund has been established shall report to the state auditor the average monthly number of members who worked at least one hundred hours per month of municipal policemen's or firemen's pension systems during the preceding fiscal year. Before the first day of August, one
thousand nine hundred eighty-three, and before the first day
of August of each calendar year thereafter, the state fire
marshal shall report to the state auditor the names and ad-
dresses of all volunteer and part volunteer fire companies
and departments within the state which meet the eligibility
requirements established in section eight-a, article fifteen,
chapter eight of this code.

Before the first day of September, one thousand nine
hundred eighty-three, and before the first day of September
of each calendar year thereafter, the state auditor shall allo-
cate and authorize for distribution the revenues in the mu-
unicipal pensions and protection fund which were collected
during the preceding calendar year to municipal policemen's
and firemen's pension and relief funds and to volunteer and
part volunteer fire companies and departments. Seventy-five
percent of the aforementioned revenues allocated shall be
allocated to municipal policemen's and firemen's pension and
relief funds and twenty-five percent of such allocated reve-
uenes shall be allocated to volunteer and part volunteer fire
companies and departments.

(1) Each municipal pension and relief fund shall have
allocated and authorized for distribution a pro rata share of
the revenues allocated to municipal policemen's and fire-
men's pension and relief funds based upon the corresponding
municipality's average monthly number of members who
worked at least one hundred hours per month during the pre-
ceding fiscal year. All moneys received by municipal pension
and relief funds under this section may be expended only
for the purposes described in sections sixteen through twenty-
eight, article twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall
receive an equal share of the revenues allocated for
volunteer and part volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in
accordance with subdivision (1) of this subsection, each
municipal fire department composed of full-time paid members
and volunteers and part volunteer fire companies and de-
partments shall receive a share equal to the share distributed
to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to such share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension system to the total number of members of such fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty, article twenty-two and sections eight-a and eight-b, article fifteen, chapter eight of this code.

CHAPTER 113

(Com. Sub. for H. B. 1216—By Mr. Albright and Mr. Steptoe)

[Passed February 22, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto seven new sections, designated sections seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, relating to allowing county commissions to adopt and implement farmland preservation programs; authorizing county commissions to appoint farmland advisory committees; requiring farmland advisory committees to propose farmland preservation programs; requiring farmland preservation programs to be integral parts of county comprehensive plans; specifying minimum requirements for adopted farmland preservation programs; specifying some acceptable methods of farmland preservation; imposing an annual fee on leases of property purchased by the county commission for farmland preservation purposes; designating funds which the county commission may use to fund farmland preservation programs; and requiring farmland advisory committees to submit written annual reports to county commissions.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eight of the code of West
ARTICLE 24. PLANNING AND ZONING.

PART XX. FARM LAND PRESERVATION PROGRAMS.

§8-24-72. Legislative findings and purpose.

The Legislature hereby finds and declares that agriculture is a unique "life support" industry and that a need exists to assist those agricultural areas of the state which are experiencing the irreversible loss of agriculturally productive land. It is the purpose of this part of this article to provide counties with an opportunity to develop reasonable methods to safeguard the production of food and fiber and to conserve agriculturally productive soils within the counties while preserving the worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming.

§8-24-73. County farmland preservation programs authorized; farmland advisory committees.

The county commission of each county may adopt and implement a farmland preservation program within the county. The county commission of each county which decides to adopt and implement a farmland preservation program shall appoint a farmland advisory committee to act in an administrative and advisory capacity on behalf of the county commission in all matters concerning farmland preservation.

The farmland advisory committee shall be composed of six
members, each serving without compensation for a term of two years, except the initial appointment of two voting committee members shall be for a term of one year. Membership on the farmland advisory committee shall consist of the following: One county commissioner; one county planning commissioner; one farmer who is a county resident and a board member of a recognized local farm organization, such as a county farm bureau or a soil conservation district; two farmers who are county residents; and one county resident who is not a farmer and who is not engaged in any agriculturally related business. All members of the farmland advisory committee shall be voting members, except the county commissioner who shall serve in an advisory capacity as a nonvoting member.

The farmland advisory committee shall adopt bylaws prescribing committee officers, meeting dates, record-keeping procedures and other internal operational procedures. The member of the farmland advisory committee who is a county commissioner shall serve as temporary chairman of the committee until committee bylaws are adopted and until committee officers are selected as prescribed by those bylaws. The farmland advisory committee shall prepare a document proposing a farmland preservation program which is consistent with the county comprehensive plan.

§8-24-74. Relationship to county comprehensive plan.

The farmland preservation program adopted shall be consistent with any existing county comprehensive plan and shall be included in any revision of this plan or in the development of any new county comprehensive plan.

§8-24-75. Content and requirements of farmland preservation programs.

A farmland preservation program adopted shall include only those qualifying properties which are voluntarily offered into the program by the landowners thereof.

An adopted farmland preservation program must meet the following minimum requirements:

(a) The program shall be developed and administered by
the farmland advisory committee, subject to the approval and
direction of the county commission;

(b) The program shall be directed toward areas of the
county containing agriculturally productive soil as determined
by appropriate soil surveys;

(c) The program shall establish uniform standards and
guidelines for the eligibility of properties for the program.
Such standards and guidelines shall take into consideration
the following: Current and past uses of the property, existing
property improvements, natural soil capabilities, drainage,
slope, property tract size and shape, location of the property
tract in relation to other potential agricultural property tracts,
impending threat of conversion of the property to nonagricul-
tural uses, property ownership and existing deed covenants and
restrictions with respect to the property;

(d) The program shall provide that in order to be eligible for
program participation that property must be actively farmed
throughout the time period during which it is offered for pro-
gram participation unless exemption from this requirement is
granted by the county commission for good cause shown; and

(e) The program shall outline the various methods of
farmland preservation which are available to prospective
participating property owners and the procedures to be fol-
lowed in applying for program consideration.

§8-24-76. Methods of farmland preservation.

The county commission, through its appointed farmland
advisory committee, may negotiate with and compensate
eligible property owners to ensure the preservation of pro-
ductive farmland within the county. Methods of preserving
farmland may include, but are not limited to, the following:

(a) Purchase of deed restriction.—With the consent of a
property owner, the county commission may purchase and
place on record a deed restriction prohibiting the use of
specified property for any purpose other than agriculture
and related activities for any period of time. Deed restrictions
so acquired shall apply only to those properties which qualify
for consideration under the terms established by an adopted
farmland preservation program;
(b) **Land purchase and resale.**—The county commission may purchase any property which qualifies for agricultural preservation under terms established by an adopted farmland preservation program. Property so purchased may be leased by the county commission for agricultural purposes or may be restricted to agricultural uses and sold to a buyer who demonstrates the willingness and ability to farm the land. Any property so purchased by the county commission must be sold or placed under lease within two years after it is acquired by the county commission. Any property so purchased by the county commission and then sold must be sold subject to a restriction limiting the use of the said property to agricultural purposes for a period of not less than ten years from the date of sale. If the property is leased, the lessee shall pay to the county commission, in addition to rent, an annual fee set by the county commission. The amount of this annual fee shall be commensurate with the amount of property taxes which would be assessed in accordance with the provisions of this code upon such property if the property were held by a private landowner.

Revenues from the sale of properties restricted to agricultural uses shall be used to recover the original purchase costs of such properties and shall be returned to the applicable funds which were used by the county commission to purchase the property. Any profits resulting from the sale of property restricted to agricultural uses may be deposited in a farmland preservation fund.

§8-24-77. **Funding of farmland preservation programs.**

A county commission may use any funds not specifically limited to other uses to fund and support a farmland preservation program.

§8-24-78. **Annual farmland preservation report.**

Before the first day of August of each year, the farmland advisory committee shall submit a written report to the county commission reviewing the operation, accomplishments, and financial status of the county’s farmland preservation program during the previous fiscal year. The report shall include a scaled map showing the location and extent of
properties within the county which are preserved for agri-
cultural use. The report shall include a tabulation of the
agricultural productivity of the farmland within the farmland
preservation program and outline program objectives for the
next fiscal year. The report shall also include a budget sum-
mary for the preceding fiscal year and for the next fiscal year.

A copy of this annual report shall be submitted to the
county planning commission for its consideration with respect
to county comprehensive plan revision.

CHAPTER 114

(S. B. 108—By Mr. Ash and Mr. Gilligan)

[Passed March 13, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact section six, article one-d, chap-
ter twenty-nine of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to continu-
ing West Virginia's membership in the Ohio River valley
water sanitation compact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1D. OHIO RIVER VALLEY WATER SANITATION COM-
MISSION.

§29-1D-6. When article effective; findings; continuation.

1 This article shall take effect and become operative and
2 the compact be executed for and on behalf of this state
3 only from and after the approval, ratification, and adop-
4 tion, and entering into thereof by the states of New York,
5 Pennsylvania. Ohio, and Virginia.
6
7 After having conducted a performance and fiscal audit
8 through its joint committee on government operations,
9 pursuant to section nine, article ten, chapter four of this
10 code, the Legislature hereby finds and declares that West
Virginia should remain a member of the compact. Accord-
notwithstanding the provisions of section four, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred eighty-eight.

CHAPTER 115
(S. B. 187—By Mr. Nelson)
[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six-h, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing a supplemental benefit for certain annuitants receiving less than a specified annual annuity, contingent on legislative appropriation; specifying factors for eligibility; and providing for computation for determination of eligibility and amount of any supplemental benefit to be made separately as to retirant’s own benefit and that receivable as beneficiary of another.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

18. Education.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.
ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22b. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than seven thousand two hundred dollars annually on the effective date of this section shall receive, upon application, a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-seven, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of fifteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article or any other article or chapter of this code, shall not exceed seven thousand two hundred dollars annually.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On and after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.
CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26h. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than seven thousand two hundred dollars annually on the effective date of this section shall receive a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-seven, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more of credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of fifteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of other provisions of this article, shall not exceed seven thousand two hundred dollars annually.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

On and after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retiree's own benefit and that which may be receivable as beneficiary of another under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.
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 ten-b, authorizing employees of the state of West Virginia and its political subdivisions to participate in voluntary tax-sheltered income deferment plans; providing definitions; authorizing the board of trustees of the West Virginia public employees retirement system to adopt deferred compensation plans; specifying the manner in which eligible employees may elect to participate in a deferred compensation plan; specifying how deferred compensation plans are to be administered; specifying the manner in which salary reductions are to be made; and establishing the extent of liability of the state of West Virginia and its political subdivisions.

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 ten-b, to read as follows:

ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.

§5-10B-1. Legislative purpose.
§5-10B-2. Definitions.
§5-10B-3. Contracts for deferred compensation plans—approval of companies providing investments.
§5-10B-4. Responsibility for implementing plans—payroll reductions—billing and administration.
§5-10B-5. Investment of funds.
§5-10B-6. Program supplemental.
§5-10B-7. Other benefits unaffected by deferred compensation plan.
§5-10B-8. Federal and state income tax.
§5-10B-9. Liabilities of state of West Virginia or political subdivisions.

§5-10B-1. Legislative purpose.

The legislative purpose of this enactment is to enable em-
employees of the state, its agencies, counties, municipalities and political subdivisions of such governmental bodies to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code as interpreted by the internal revenue service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to such voluntary income deferment plans. It is further the purpose of this enactment to authorize the establishment of separate plans for the state and its agencies and for counties, municipalities and political subdivisions within the state.

§5-10B-2. Definitions.

Unless the context in which used clearly indicates a different meaning, as used in this article:

(a) "Board of trustees" means the board of trustees of the West Virginia public employees retirement system provided for in article ten of this chapter.

(b) "Deferred compensation plan" means an arrangement whereby the state of West Virginia, as the public employer, or a public employer agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the state employer or the public employer to the employee at a later date pursuant to this article and the federal laws and regulations relating to eligible state deferred compensation plans as described in Internal Revenue Code Section 457.

(c) "Employee" means any person, whether appointed, elected, or under contract, providing services for the state employer or public employer, for which compensation is paid.

(d) "Public employer" means counties, municipalities or political subdivisions of such governmental bodies which meet the definition of "state" as described in Internal Revenue Code Section 457 (d) (1), but which do not meet the definition of "state employer" as used in this article.

(e) "State employer" means the state of West Virginia and any state agency or instrumentality of the state.
§5-10B-3. Contracts for deferred compensation plans—approval of plans—approval of companies providing investments.

The state employer or any public employer may, by contract, agree with any of its employees to defer any portion of that employee's compensation and may subsequently purchase or acquire from any company licensed to do business in the state of West Virginia fixed or variable annuities, insurance, endowment, or savings account for the purpose of carrying out the objectives of the deferred compensation plan as described in this article.

§5-10B-4. Responsibility for implementing plans—payroll reductions—billing and administration.

The responsibility for implementing the deferred compensation plan for employees of the state employer shall be delegated to the board of trustees. The responsibility for implementing the deferred compensation plan for employees of a public employer, as defined hereunder, shall be delegated to the county commission of a county or tribunal in lieu thereof, the governing body of a municipality, as that term is defined in section two, article one, chapter eight of this code, and, in the case of any other political subdivision, the board, commission, or other similar body responsible for determining the policy of such political subdivision. If the governing body has adopted more than one plan, an employee electing to participate shall also elect the plan in which he desires to participate. Payroll reductions shall be made, in each instance, by the appropriate payroll officer. The board of trustees or appropriately designated local officer, board or committee of such deferred compensation plan may contract with a private corporation, institution and/or custodial bank to provide consolidated billing and all or any other administrative services deemed necessary, in order that any such deferred compensation plan adopted shall operate without cost to or contribution from the state employer or public employer except for the incidental expense of administering the payroll-salary reductions and the remittance thereof.

§5-10B-5. Investment of funds.

Notwithstanding any other provision of law to the contrary,
the board of trustees, as well as the appropriate local officer, board or committee, designated as responsible for implementing a deferred compensation plan, is hereby authorized to invest compensation held pursuant to any such deferred compensation plan in fixed and variable annuities, insurance, endowment or savings accounts from any company duly authorized to contract such business in the state.

§5-10B-6. Program supplemental.

The deferred compensation plan or plans established pursuant to this article shall exist and serve in addition to other retirement, pension or benefit systems established by the state employer and any public employer. The deferred compensation plan or plans established by this article shall not supersede, make inoperative or reduce any benefits provided by the consolidated retirement system or programs established by the state employer or any public employer, or any other retirement, pension or benefit program established by law for the benefit of employees.

§5-10B-7. Other benefits unaffected by deferred compensation plan.

Notwithstanding any other provision of law to the contrary, any compensation deferred under this article shall be considered part of an employee's compensation for purposes of any other employee retirement, pension or benefit program. No deferral of compensation under any deferred compensation plan shall effect a reduction of any retirement, pension or other benefit program provided by law.

§5-10B-8. Federal and state income tax.

Notwithstanding any other provision of this article or any other provision of law to the contrary, any compensation deferred under any deferred compensation plan shall not be subject to any federal, state or municipal income tax nor shall any amount of compensation deferred be included for the purposes of computation of any such income tax withheld on behalf of any employee.

§5-10B-9. Liabilities of state of West Virginia or political subdivisions.

The financial liability of the state employer or public em-
employer under any deferred compensation plan shall be limited
in each instance to the value of the particular fixed or variable
annuity, insurance, endowment or savings account acquired
pursuant to the terms and provisions of this article, and the
state employer or public employer shall not be liable for any
change in value of such investment at the time of distribution
to an employee.

CHAPTER 117
(Com. Sub. for H. B. 1625—By Mr. Bumgarner and Mr. Gilliam)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees insurance act; deleting provision that employees agree to pay the cost of coverage for spouses and dependents; providing for three-month continuation of insurance coverage subsequent to date of employee's involuntary or reduction in work force termination at no additional cost to employee; limitations in case of discharge for misconduct; and providing for reemployment or recall to active employment within twelve months of termination to not be deemed new employment for again requiring employee's contributive share of premium cost, where such share had earlier been once paid.

Be it enacted by the Legislature of West Virginia:

That section twelve, article sixteen, 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-12. Payment of cost by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination.

The board is hereby authorized to provide under any con-
tract or contracts entered into under the provisions of this article that the costs of any such group hospital and surgical insurance, group major medical insurance, group life and accidental death insurance benefit plan or plans may be paid by the employer and employee. In addition, each employee shall be entitled to have his spouse and dependents, as defined by the rules and regulations of the board, included in any group hospital and surgical insurance or group major medical insurance coverage provided. The board shall adopt rules and regulations according to chapter twenty-nine-a of this code governing the discontinuance and resumption of any employee's coverage for his spouse and dependents.

Should a participating employee be terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee: Provided, That an employee discharged for misconduct shall not be eligible for extended benefits under this section: Provided, however, That coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued: Provided further, That should the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his prior termination, he shall not be considered a new enrollee and shall not be required to again contribute his share of the premium cost, if he had already fully contributed such share during the prior period of employment.

CHAPTER 118
(S. B. 300—By Mr. Boettner)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section thirteen-b, relating to voluntary deductions of association dues or fees from employee salaries by the state auditor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees.

1 Any officer or employee of the state of West Virginia may authorize that a voluntary deduction from his net wages be made for the payment of membership dues or fees to an employee association. Such deductions shall be authorized on a form provided by the auditor of the state of West Virginia and shall state (a) the identity of the employee; (b) the amount and frequency of such deductions; and (c) the identity and address of the association to which such dues shall be paid. Upon execution of such authorization and its receipt by the office of the auditor, such deductions shall be made in the manner specified on the form and remitted to the designated association on the tenth day of each month: Provided, That such deductions shall not be made more frequently than once monthly. Deduction authorizations may be revoked at any time thirty days prior to the date on which the deduction is regularly made and on a form to be provided by the office of the state auditor: Provided, however, That nothing in this section shall interfere with or remove any existing arrangement for dues deduction between an employer of any political subdivision of the state and its employees.
AN ACT to amend and reenact section five-a, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to liability insurance for county boards of education, their employees, members, administrative staff and county superintendent, and employees and officers of the state department of corrections; requiring that the state board of risk and insurance management provide coverage in an amount not less than one million dollars for each occurrence; requiring that each county board of education purchase excess coverage of at least five million for each occurrence; requiring such insurance be purchased from a company licensed to do business in this state; and providing for defense in the case of suit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the state department of corrections.

In accordance with the provisions of this article, the state board of risk and insurance management shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools and school board members and for all employees and officers of the state department of corrections. Said insurance shall cover any claim, demand, action, suit or judgment by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or
without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the department of corrections was acting in the discharge of his duties, within the scope of his office, position or employment, under the direction of the board of education or commissioner of corrections or in an official capacity as a county superintendent or as a school board member or as commissioner of corrections. Such insurance coverage shall be in an amount to be determined by the state board of risk and insurance management, but in no event less than one million dollars for each occurrence. In addition, each county board of education shall purchase, through the board of risk and insurance management, excess coverage of at least five million dollars for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

The insurance policy shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

The county superintendent and other school personnel shall be defended by the county board or an insurer in the case of suit, unless the act or omission shall not have been within the course or scope of employment or official responsibility or was motivated by malicious or criminal intent.

No policy or contract of liability insurance shall be purchased as provided herein, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense to any claim covered by the terms of such policy, the defense of governmental immunity. In any action against a person covered by insurance furnished pursuant to this section, when there is in effect liability in-
insurance for such person in an amount equal to or greater than the amount sued for, the attorney for such person, the attorney for such insurance company, or any other attorney who may appear on behalf of such person or insurance company shall not set up the defense of governmental immunity in any such action.

CHAPTER 120
(H. B. 2032—By Mr. Martin, 35th Dist.)

[Passed March 12, 1982; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section three, article five, chapter twenty-four-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to funding the gas pipeline safety operations of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-3. Funding; property and revenue license fees.

1 (a) Every pipeline company shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the public service commission and levied by it upon each of such pipeline companies according to the number of three-inch equivalent pipeline miles included in its pipeline facilities, and shall be apportioned among such pipeline companies upon the basis of the pipeline companies' reports submitted to the commission in such form as the commission may prescribe, so as to produce a revenue of not more than three hundred thousand dollars per annum, which fees shall be paid on or before the first day of July in each year.

(b) Such sums collected under subsection (a) of this section shall be paid into the state treasury and kept as a special fund,
designated "Public Service Commission Gas Pipeline Safety Fund," to be appropriated as provided by law for the purpose of paying the salaries, compensation, costs and expenses of its employees. Any balance in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and may be appropriated as provided in this subsection.

CHAPTER 121
(H. B. 1432—By Mr. Shingleton and Mr. Greer)

[Passed February 10, 1982; in effect ninety days from passage. Disapproved by the Governor and repassed notwithstanding his objections.]

AN ACT to amend and reenact articles one, two and three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article four of said chapter twenty-nine-a, all relating generally to state administrative procedures; making legislative findings; defining certain terms; limiting application of the chapter; requiring the secretary of state to establish and maintain a state register; creating the state register; specifying that the contents of the state register include all materials relating to rule making; providing that the state register is deemed a public record; requiring agencies to file rules in the state register; providing the format and numbering of such rules and specifying the requirements of size and type; providing for publication of and subscription to the state register with monthly supplements and permanent biennial volumes; prohibiting agencies from duplicating rules unless the agency can do so more inexpensively; providing for distribution of one alternative format of the rules by agency; requiring agencies to make orders and records available; requiring that rules be promulgated only in accordance with this chapter; specifying limits on agency rule making; requiring agencies to adopt rules of procedure; requiring agencies to propose procedural and interpretive rules; requiring notice of rule making; providing for public comment on proposed rules; providing that findings and determinations be filed in the state register; requiring notice of hearings; allowing
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for adoption of procedural and interpretive rules by agencies; requiring proposal of legislative rules and approval of such rules for submission to the Legislature; creating a legislative rule-making review committee; providing for review of rules submitted to the committee and the scope of that review; providing for a committee recommendation to the Legislature; providing for submission of legislative rules to the Legislature; providing for authorization by the Legislature to promulgate legislative rules; defining the effective date of such rules; providing for withdrawal or modification of rules by agency; providing for emergency rules and review of such rules; providing for legislative review of procedural and interpretive rules; and providing that prior rules are not affected.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-1. Legislative findings and statement of purpose.
§29A-1-2. Definitions of terms used in this chapter.
§29A-1-3. Application of chapter; limitations.

§29A-1-1. Legislative findings and statement of purpose.

1 The Legislature finds and declares that administrative law and the administrative practice and procedure of the various executive and administrative officers, offices and agencies comprises a body of law and policy which is voluminous, often formulated without adequate public participation and collected and preserved for public knowledge and use in an unacceptable and essentially inaccessible fashion. The Legislature further finds that the delegation of its legislative powers to other departments and agencies of government requires of
the Legislature that the rules and regulations of such other
departments and agencies, which have the force and effect
of law because of their legislative character, should be care-
fully and extensively reviewed by the Legislature in a man-
ner properly respectful of the separation of powers but in
keeping with the legislative force and effect of such rules and
regulations. Accordingly, the Legislature has and by this
chapter intends to fix by law uniform and settled administrative
practices and procedures, subject only to enumerated excep-
tions, for the exercise of executive rule-making authority and
for the exercise by executive and administrative officers, offices
and agencies of lawfully delegated legislative power, with ap-
propriate legislative review of that exercise of such delegated
legislative authority and with established procedures for legis-
lative oversight of the exercise of executive rule-making author-
ity.

In that light chapter twenty-nine-a of this code establishes,
with enumerated exceptions, procedures for rule making, de-
claratory rulings by agencies and the conduct of contested
administrative cases, together with a plan for the systematic
preparation, public consideration, orderly promulgation, pre-
servation and public availability of the body of law, policy and
administrative decisions within the purview of this chapter.

§29A-1-2. Definitions of terms used in this chapter.

For the purposes of this chapter:

(a) "Agency" means any state board, commission, depart-
ment, office or officer authorized by law to make rules or
adjudicate contested cases, except those in the legislative or
judicial branches;

(b) "Contested case" means a proceeding before an agency
in which the legal rights, duties, interests or privileges of
specific parties are required by law or constitutional right
to be determined after an agency hearing, but does not include
cases in which an agency issues a license, permit or certificate
after an examination to test the knowledge or ability of the
applicant where the controversy concerns whether the examina-
tion was fair or whether the applicant passed the examination
and does not include rule making;
(c) "Interpretive rule" means every rule, as defined in subsection (i) of this section, adopted by an agency independently of any delegation of legislative power which is intended by the agency to provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by it and which is not intended by the agency to be determinative of any issue affecting private rights, privileges or interests. An interpretive rule may not be relied upon to impose a civil or criminal sanction nor to regulate private conduct or the exercise of private rights or privileges nor to confer any right or privilege provided by law and is not admissible in any administrative or judicial proceeding for such purpose, except where the interpretive rule established the conditions for the exercise of discretionary power as herein provided. However, an interpretive rule is admissible for the purpose of showing that the prior conduct of a person was based on good faith reliance on such rule. The admission of such rule in no way affects any legislative or judicial determination regarding the prospective effect of such rule. Where any provision of this code lawfully commits any decision or determination of fact or judgment to the sole discretion of any agency or any executive officer or employee, the conditions for the exercise of that discretion, to the extent that such conditions are not prescribed by statute or by legislative rule, may be established by an interpretive rule and such rule is admissible in any administrative or judicial proceeding to prove such conditions.

(d) "Legislative rule" means every rule, as defined in subsection (i) of this section, proposed or promulgated by an agency pursuant to this chapter. Legislative rule includes every rule which, when promulgated after or pursuant to authorization of the Legislature, has (1) the force of law, or (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit. Every rule which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule. Unless lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency and has no legal force or effect until promulgated by specific authorization of the Legislature. Except where otherwise specifically provided in this code, legis-
lative rule does not include (A) findings or determinations of fact made or reported by an agency, including any such find-
ings and determinations as are required to be made by any agency as a condition precedent to proposal of a rule to the Legislature; (B) declaratory rulings issued by an agency pursuant to the provisions of section one, article four of this chapter; (C) orders, as defined in subdivision (e) of this section; or (D) executive orders or proclamations by the governor issued solely in the exercise of executive power, including executive orders issued in the event of a public disaster or emergency;

(e) "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive or declaratory in form) by any agency of any matter other than rule making;

(f) "Person" includes individuals, partnerships, corporations, associations or public or private organizations of any character;

(g) "Procedural rule" means every rule, as defined in subsection (i) of this section, which fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency, including forms prescribed by the agency;

(h) "Proposed rule" is a legislative rule, interpretive rule, or a procedural rule which has not become effective pursuant to the provisions of this chapter or law authorizing its promulgation;

(i) "Rule" includes every regulation, standard or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, affecting private rights, privileges or interests, or the procedures available to the public, adopted by an agency to implement, extend, apply, interpret or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations relating solely to the internal management of the agency, nor regulations of which notice is customarily given to the public by markers or signs, nor mere instructions. Every rule shall be classified as "legislative rule," "interpretive rule" or "procedural rule," all as defined in this section, and shall be effective only as provided in this chapter;
(j) "Rule making" means the process for the formulation, amendment or repeal of a rule as provided in this chapter.

§29A-1-3. Application of chapter; limitations.

(a) The provisions of this chapter do not apply in any respect whatever to executive orders of the governor, which orders to the extent otherwise lawful, shall be effective according to their terms: Provided, That the executive orders shall be admitted to record in the state register when and to the extent the governor deems suitable and shall be included therein by the secretary of state when tendered by the governor.

(b) Except as to requirements for filing in the state register, and with the Legislature or its rule-making review committee, provided in this chapter or other law, the provisions of this chapter do not apply in any respect whatever to the West Virginia board of probation and parole, the public service commission, the board of public works sitting as such, the West Virginia board of education and the West Virginia board of regents: Provided, That rules of such agencies shall be filed in the state register in the form prescribed by this chapter and be effective no sooner than sixty consecutive days after being so filed: Provided, however, That such agencies may promulgate emergency rules in conformity with section fifteen, article three of this chapter.

(c) The provisions of this chapter do not apply to rules relating to, or contested cases involving, public elections, the conduct of inmates or other persons admitted to public institutions, the conduct of students at public schools or public educational institutions, the open seasons and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the conduct of persons in military service or the receipt of public assistance, but two certified copies of each such rule shall be filed in the state register.

(d) Nothing herein shall be construed to affect, limit or expand any express and specific exemption from this chapter contained in any other statute relating to a specific agency, but such exemptions shall be construed and applied in accordance with the provisions of this chapter to effectuate any
36 limitations on such exemptions contained in any such other statute.

ARTICLE 2. STATE REGISTER.

§29A-2-1. Duty of the secretary of state.

1 It is the nondiscretionary, nondelegable duty of the secretary of state to establish and maintain the state register hereby created, and offer copies for subscription and public distribution in accordance with the provisions of this article.

§29A-2-2. State register created.

1 There is hereby created in the office of the secretary of state, a public record to be known and denominated as the state register, to be established, compiled, indexed and copied, and such copies offered for subscription and distribution, in accordance with the provisions of this article.


1 The secretary of state shall receive and file in the state register:

3 (a) Every notice of a proposed rule or a public hearing for the finding of facts or public comment on a proposed rule.

3 (b) The text of every proposed rule and subsequent proposed amendment thereto and fiscal notes attached thereto.

3 (c) Every determination of fact or judgment tendered by an agency for inclusion therein and every notice of submission to the Legislature or its rule-making review committee made in conformity with this chapter.

3 (d) Every executive order tendered by the governor.
(e) Every notice of and the text of any report or finding of the legislative rule-making review committee and such other material as may be tendered by the clerk or presiding officer of either house of the Legislature for filing in the state register.

(f) Such other material related to administrative procedures and actions as an agency may desire to make a public record or the secretary of state may deem appropriate, or where required by law.

(g) Notice of and the text of any action by an agency of the Legislature or its committees relative to the process of promulgation of rules tendered to the secretary of state for inclusion in the register.

(h) Every other paper required by law to be filed in such register or which may be filed therein in order to comply with any other provision of law.


Every paper filed in the state register shall be a public record provable and admissible as evidence if otherwise relevant, of which judicial notice may be taken, either under lawful certification or by reason of duplication and distribution as a copy of the state register in accordance with this article.

§29A-2-5. Agency rules to be filed in state register; failure to file.

(a) Notwithstanding any filing prior to the effective date of this section, each agency shall hereafter file in the state register a certified copy of all of its lawfully adopted rules which are in force on the date of such filing and all of its proposed rules which have not become effective prior to the date of such filing. All such rules and proposed rules shall be arranged, compiled, numbered and indexed in accordance with the provisions of section six of this article, and shall also include a designation of each rule as either legislative rule, interpretive rule or procedural rule. Any agency desiring to pursue promulgation of a rule proposed prior to the effective date of this section but not then yet effective, shall refile such proposed rule, following the procedure set forth in article three: Provided, That it shall not be necessary for
the agency to again hold a public hearing to determine facts or 
public comment, but in all other respects the procedures pro-
vided for the promulgation of rules under this section shall 
be complied with. On or before the first day of January, one 
thousand nine hundred eighty-three, any other agency required 
by law to file its rules in the state register in order for such 
rules to be effective shall resubmit and refile such rules in 
accordance with this section. If any agency fails to file a 
certified copy of any rule or proposed rule in accordance with 
this section on or before the first day of January, one thou-
sand nine hundred eighty-three, then such rule or proposed 
rule not so filed shall be thereafter void and unenforceable 
and shall be of no further force and effect except as to en-
forcement of its effective provisions for actions, causes or 
matters occurring prior to the first day of January, one thousand 
nine hundred eighty-three.

(b) Except for such changes in the designation and num-
bering of a rule, including numerical references within a rule, 
as are required to comply with the provisions of section six 
of this article, no legislative rule filed under the provisions of 
this section may be amended in any way prior to such filing 
unless such amendment is made in compliance with the re-
quirements of article three of this chapter.

§29A-2-6. Format and numbering of agency rules filed in state 
register.

(a) Each rule or proposed rule filed by an agency in the 
state register shall include as its initial provision: (1) A state-
ment identifying such rule as a legislative rule, an interpretive 
rule, or a procedural rule, as the case may be; (2) a statement 
of each section, article and chapter of this code to which such 
rule or any part thereof relates; and (3) a statement of the 
section, article and chapter of this code or any other provision 
of law which provides authority for the promulgation of such 
rule. The agency shall be estopped from relying on any author-
ity for the promulgation of such rule which is not stated there-
in in accordance with the requirements of this subdivision.

(b) An agency which files the rule is required, to the extent 
practicable, to compile, number and index such rule in se-
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sequence according to the number of the section, article and
chapter of this code to which such rule or any part thereof
relates.

Each rule when filed to be finally effective shall have at-
tached thereto an abstract of its promulgation history prepared
by the agency showing the date of the filing in the state register
of the content of, or notice of any procedure relating to, action
necessary under this chapter to cause such rule to be finally
effective: Provided, That any error or omission in such abstract
shall not affect the validity of any rule or action in respect
thereto.

(c) The secretary of state may prescribe by legislative rule
a standard size and format for rules to be filed in the state
register and he may prescribe such procedural or interpretive
rules as he deems advisable to clarify and interpret the provi-
sions of this section. The secretary of state shall refuse to ac-
cept for filing any rules which do not comply with the specific
provisions of this section, and he may refuse to accept for
filing any rules which do not comply with the procedural rules
issued by him pursuant to this section until the rules sought to
be filed are brought into conformity with the secretary of state's
procedural rules.

(d) Unless and until the secretary of state prescribes other-
wise by rule issued and made effective under the provisions of
subsection (c) of this section, each rule filed in the state
register shall be on white paper measuring eight and one-half
inches by eleven inches, typewritten and single-spaced, with a
one inch margin at the top, bottom and each side of each page,
and shall be reproduced photographically, or by xerography
or other duplication process. The secretary of state may grant
specific exceptions to such requirements in the case of maps,
diagrams and exhibits, if the same may not be conveniently
folded and fastened with the other pages of rules and in the
case of rules which incorporate the promulgation of a federal
agency or other organization which could not be submitted in
the standard size and format except at undue expense. Ma-
terials submitted for inclusion in the state register shall be
fastened on the left side by two or more fasteners attached
through holes suitable for insertion into ring binders.

(a) The Legislature intends that the secretary of state offer to the public convenient and efficient access to copies of the state register or parts thereof desired by the citizens. The provisions of this section are enacted in order to provide a means of doing so pending any other means provided by law or legislative rule.

(b) Until the first day of January, one thousand nine hundred eighty-three, the secretary of state may use any procedure he adopts to fulfill the objects of this section including any of the procedures provided in this section.

(c) On and after the first day of January, one thousand nine hundred eighty-three, and the refiling of all rules effective on the effective date of this section the body of the rules thus refiled together with (1) those rules made effective from and after the effective date of this section (2) all proposed rules not yet effective on and before the first day of January, one thousand nine hundred eighty-three (3) all notices and other materials related to such proposed rules and (4) the chronological index hereinafter provided shall constitute the first biennial permanent state register and have a publication date of the first day of January, one thousand nine hundred eighty-three.

(d) All materials filed in the state register after the effective date of this section shall be indexed daily in chronological order of filing with a brief description of the item filed and a columnar cross index to (1) agency and (2) section, article and chapter of the code to which it relates and by which it is filed in the state register and (3) such other information in the description or cross index as the secretary of state believes will aid a citizen in using the chronological index.

(e) The secretary of state shall cause to be duplicated in such number as shall be required, on white paper with two punches suitable for fastening in two-ring binders, the permanent biennial state register, the chronological index and other materials filed in the register, or any part by agency or section, article or chapter for subscription at a cost including labor, paper and postage, sufficient in his judgment to defray
the expense of such duplication. The secretary of state shall also offer, at least at monthly intervals, supplements to the published materials listed above. Any subscription for monthly supplements shall be offered annually and shall include the chronological index and materials related to such agency or agencies, or section, article or chapter of the code as a person may designate. A person may limit the request to notices only, to notices and rules, or to notices and proposed rules, or any combination thereof.

(f) On and after the first day of January, one thousand nine hundred eighty-three, and every two years thereafter the secretary of state shall offer for purchase succeeding biennial permanent state registers which shall consist of all rules effective on the date of publication selected by the secretary of state, which date shall be at least two years from the last such publication date, and materials filed in the state register relating thereto. The cost of the succeeding biennial permanent state register and for the portion relating to any agency or any section, article or chapter of the code which may be designated by a person purchasing the same shall be fixed in the same manner specified in subsection (e) of this section.

(g) The secretary of state may omit from any duplication made pursuant to subsections (c) and (f) of this section any rules the duplication of which would be unduly cumbersome, expensive or otherwise inexpedient, if a copy of such rules is made available from the original filing of such rule, at a price not exceeding the cost of duplication, and if the volume from which such rule is omitted includes a notice in that portion of the publication in which the rule would have been located, stating (1) the general subject matter of the omitted rule, (2) each section, article and chapter of this code to which the omitted rule relates, and (3) the means by which a copy of the omitted rule may be obtained.

(h) All fees and other moneys collected by the secretary of state pursuant to the provisions of this section shall be deposited by him in a separate fund in the state treasury and shall be expended solely for the purposes of this section, unless otherwise provided by appropriation or other action of the Legislature.
(i) The secretary of state may propose changes to the procedures outlined in the section above by proposing a legislative rule under the provisions of section nine, article three, but may promulgate no rules containing such changes unless authorized by the Legislature pursuant to article three.


(a) No agency may duplicate copies of its rules for general distribution except in accordance with this section. However, a duly certified copy may be provided by the agency, at the cost of reproduction, if requested and if not presently available from the secretary of state. Whenever an agency desires multiple copies of all or parts of its rules or other materials filed in the state register, it shall purchase the same from the office of the secretary of state: Provided, That when reproduction of the number of copies desired by the agency can be accomplished at a lower cost by the agency, it shall notify the secretary of state in writing of such lower cost and, unless the secretary of state shall within ten days agree to furnish such copies for an equal and lower cost and do so within twenty days thereafter, may proceed at its cost to acquire such copies elsewhere if otherwise authorized to do so by law.

(b) Any published rules may be distributed only to those persons who specifically request a copy of the rules and may not be distributed in any manner to persons who have not requested a copy. The agency may print or otherwise acquire only the number of copies of any rule that it may reasonably anticipate will be requested by members of the general public.

(c) Except as provided in this section, no agency may expend funds to alter the format or presentation of such rules from that provided in the state register (except to adequately fasten and bind the pages) or expend funds to compensate the office of secretary of state to do so.

(d) Whenever for public convenience an agency deems it appropriate to reproduce one or more rules for general public distribution in some printed form, such as a booklet or other format not provided by copying the state register, the agency shall give written notice to the secretary of state and the legislative auditor of its intention to do so, including therein
the anticipated cost and the source or account of appropriations
therefor. Such notice shall be recorded in the state register
as other notices. After twenty days shall have elapsed, the
agency may proceed unless the secretary of state shall have
made a finding that such additional publication is unnecessary
or unduly expensive. Any such finding shall be served on the
agency and the governor and filed in the state register. The
governor may, within ten days after receiving such finding,
order such publication canceled or order such amendment
thereof as is appropriate in his judgment. Any such order of
the governor shall be effective until and unless the Legislature
shall otherwise provide. In the absence of such an order by
the governor, the agency may proceed in accord with its
original notice of intent.


Every agency shall file in the state register or, pursuant to
rules adopted in accordance with the provisions of this chapter,
make available to public inspection all final orders, decisions
and opinions in the adjudication of contested cases except those
required for good cause to be held confidential and not cited as
precedent. Except as otherwise required by statute, matters of
official record shall be made available for public inspection
pursuant to rules adopted in accordance with the provisions
of this chapter.

ARTICLE 3. RULE MAKING.

§29A-3-1. Rules to be promulgated only in accordance with this article.
§29A-3-2. Limitations on authority to exercise rule-making power.
§29A-3-3. Rules of procedure required.
§29A-3-4. Filing of proposed procedural rules and interpretive rules.
§29A-3-5. Notice of proposed rule making.
§29A-3-6. Filing findings and determinations for rules in state register;
evidence deemed public record.
§29A-3-7. Notice of hearings.
§29A-3-8. Adoption of procedural and interpretive rules.
§29A-3-10. Creation of a legislative rule-making review committee.
§29A-3-11. Submission of legislative rules to the legislative rule-making
review committee.
§29A-3-12. Submission of legislative rules to Legislature.
§29A-3-13. Adoption of legislative rules; effective date.
§29A-3-14. Withdrawal or modification of proposed rules.
§29A-3-15. Emergency legislative rules; procedures for promulgation; definition.

§29A-3-16. Legislative review of procedural rules, interpretive rules and existing legislative rules.

§29A-3-17. Prior rules.

§29A-3-1. Rules to be promulgated only in accordance with this article.

In addition to other rule-making requirements imposed by law and except to the extent specifically exempted by the provisions of this chapter or other applicable law, every rule and regulation (including any amendment of or rule to repeal any other rule) shall be promulgated by an agency only in accordance with this article and shall be and remain effective only to the extent that it has been or is promulgated in accordance with this article.

§29A-3-2. Limitations on authority to exercise rule-making power.

(a) Except when, and to the extent, that this chapter or any other provision of law now or hereafter made expressly exempts an agency, or a particular grant of the rule-making power, from the provisions of this article, every grant of rule-making authority to an executive or administrative officer, office or agency, heretofore provided, shall be construed and applied to be effective only:

(1) If heretofore lawfully exercised in accordance with the prior provisions of this chapter and the resulting rule has not been revoked or invalidated by the provisions hereof or by the agency, or

(2) If exercised in accordance with the provisions hereof.

(b) No executive or administrative agency shall be deemed to have power and authority to promulgate a legislative rule without compliance with this article unless: (1) The provision of this code, heretofore or hereafter enacted, granting such power and authority, expressly exempts its exercise from legislative rule-making review prior to promulgation or (2) the grant of such power and authority is exempted from the application of this chapter by the express provisions of this chapter. To the extent any such grant of power and authority, not so exempt, shall be deemed to exceed the limits and pro-
visions of this article, such power and authority to promulgate legislative rules is hereby revoked.

§29A-3-3. Rules of procedure required.

In addition to other rule-making requirements imposed by law:

(a) Each agency shall adopt procedural rules governing the formal and informal procedures prescribed or authorized by this chapter. Procedural rules shall include rules of practice before the agency, together with forms and instructions.

(b) To assist interested persons dealing with it, each agency shall, so far as considered practicable, supplement its rules with descriptive statements of its procedures.

§29A-3-4. Filing of proposed procedural rules and interpretive rules.

(a) When an agency proposes a procedural rule or an interpretive rule, the agency shall file in the state register a notice of its action, including the text of the rule as proposed.

(b) All proposed rules filed under subsection (a) of this section shall have a fiscal note attached itemizing the cost of implementing the rules as they relate to this state and to persons affected by the rules and regulations. Such fiscal note shall include all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents. The objectives of the rules shall be clearly and separately stated in the fiscal note by the agency issuing the proposed rules. No procedural or interpretive rule shall be void or voidable by virtue of noncompliance with this subsection.

§29A-3-5. Notice of proposed rule making.

When an agency proposes to promulgate a rule other than an emergency rule it shall file in the state register a notice of its action, including a text of the rule proposed, a fiscal note as defined in subsection (b) of section four, and any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate
such rule. If the agency is considering alternative draft proposals it may include the text thereof.

The notice shall fix a date, time and place for the taking of evidence for any findings and determinations which are a condition precedent to promulgation of the proposed rule and contain a general description of the issues to be decided. If no findings and determinations are required as a condition precedent to promulgation, the notice shall fix a date, time and place for receipt of public comment on such proposed rule.

If findings and determinations are a condition precedent to the promulgation of such rule, then an opportunity for public comment on the merits of the rule shall be afforded after such findings and determinations are made. In such event, notice of the hearing, or of the period for receiving public comment on the proposed rule shall be attached to and filed as a part of the findings and determinations of the agency when filed in the state register.

In any hearing for public comment on the merits of the rule, the agency may limit presentations to written material. The time, date and place fixed in the notice shall constitute the last opportunity to submit any written material relevant to any hearing, all of which may be earlier submitted by filing with the agency.

The agency may also, at its expense, cause to be published as a Class I legal publication in every county of the state, any notice required by this section.

Any citizen or other interested party may appear and be heard at such hearings as are required by this section.

§29A-3-6. Filing findings and determinations for rules in state register; evidence deemed public record.

(a) Incident to fixing a date for public comment on a proposed rule, the agency shall promulgate the findings and determinations required as a condition precedent thereto, and state fully and succinctly the reasons therefor and file such findings and determinations in the state register. If the agency amends the proposed rule as a result of the evidence or com-
ment presented pursuant to section five, such amendment shall
be filed with a description of any changes and a statement
listing the reasons for the amendment.

(b) The statement of reasons and a transcript of all
evidence and public comment received pursuant to notice are
public records and shall be carefully preserved by the agency
and be open for public inspection and copying for a period
of not less than five years from the date of the hearing.

§29A-3-7. Notice of hearings.

Notices of hearings required by sections five and six of this
article shall be filed in the state register not less than thirty
nor more than sixty days before the date of such hearing or the
last day specified therein for receiving written material. Any
hearing may be continued from time to time and place to
place by the agency which shall have the effect of extending
the last day for receipt of evidence or public comment. Notice
of such continuance shall be promptly filed thereafter in the
state register.

§29A-3-8. Adoption of procedural and interpretive rules.

A procedural and interpretive rule, other than an emergency
rule, shall be considered by the agency for adoption not
later than six months after the close of public comment and a
notice of withdrawal or adoption shall be filed in the state
register within that period. Failure to file such notice shall
constitute withdrawal and the secretary of state shall note such
failure in the state register immediately upon the expiration
of the six-month period.

A procedural or interpretive rule may be amended by the
agency prior to final adoption without further hearing or pub-
lic comment. No such amendment may change the main pur-
pose of the rule. If the fiscal implications have changed since
the rule was proposed, a new fiscal note shall be attached to
the notice of filing. Upon adoption of the rule (including any
such amendment) the agency shall file the text of the adopted
procedural or interpretive rule with its notice of adoption in
the state register and the same shall be effective on the date
specified in the rule or thirty days after such filing, whichever
is later.

When an agency proposes a legislative rule, other than an emergency rule, it shall be deemed to be applying to the Legislature for permission, to be granted by law, to promulgate such rule as approved by the agency for submission to the Legislature or as amended and authorized by the Legislature by law.

An agency proposing a legislative rule, other than an emergency rule, shall first file in the state register a notice of its proposal, including the text of the legislative rule and including all materials required in the case of a procedural or interpretive rule. The agency shall then proceed as in the case of a procedural and interpretive rule to the point of, but not including final adoption. In lieu of final adoption, the agency shall approve the rule, including any amendments, for submission to the Legislature and file such notice of approval in the state register and with the legislative rule-making review committee.

Such approval of the agency for submission to the Legislature shall be deemed to be approval for submission to the Legislature only and not deemed to give full force and effect until authority to do so is granted by law.

§29A-3-10. Creation of a legislative rule-making review committee.

(a) There is hereby created a joint committee of the Legislature, known as the legislative rule-making review committee, to review all legislative rules of the several agencies and such other rules as the committee deems appropriate. The committee shall be composed of six members of the Senate, appointed by the president of the Senate, and six members of the House of Delegates, appointed by the speaker of the House of Delegates. In addition, the president of the Senate and the speaker of the House of Delegates shall be ex officio nonvoting members of the committee and shall designate the cochairmen. Not more than four of the voting members of the committee from each house shall be members of the same political party. The members shall serve until their successors shall have been appointed as heretofore provided. Members of the committee shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses,
including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the legislative rule-making review committee, but if no such appropriation be made, such expenses shall be paid from the appropriation under “Account No. 103 for Joint Expenses,” but no expense of any kind whatever payable under said Account No. 103 for joint expenses shall be incurred unless first approved by the joint committee on government and finance. The committee shall meet at any time, both during sessions of the Legislature and in the interim.

(b) The committee may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

§29A-3-11. Submission of legislative rules to the legislative rule-making review committee.

(a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the agency shall submit to the legislative rule-making review committee at a regular meeting of such committee fifteen copies of (1) the full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from any existing rule stricken-through but clearly legible; (2) a brief summary of the content of the legislative rule and description of any rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the committee may request or which may be required by law.

(b) The committee shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the agency has exceeded the scope of its statutory authority in approving the proposed legislative rule;
(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the committee shall recommend that the Legislature:

(1) Authorize the agency to promulgate the legislative rule, or

(2) Authorize the agency to promulgate part of the legislative rule, or

(3) Authorize the agency to promulgate the legislative rule with certain amendments, or

(4) Recommend that the rule be withdrawn.

The committee shall file notice of its action in the state register and with the agency proposing the rule: Provided, That when the committee makes the recommendations of subdivision (2), (3) or (4) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the committee recommends that a rule be authorized, in whole or in part, by the Legislature, the committee
shall instruct the office of legislative services to draft a bill
authorizing the agency to promulgate all or part of the legis-
lative rule, and incorporating such amendments as the com-
mittee desires. If the committee recommends that the rule not
be authorized, it shall include in its report a draft of a bill
authorizing promulgation of the rule together with a recom-
mendation. Any draft bill prepared under this section shall
contain a legislative finding that the rule is within the legisla-
tive intent of the statute which the rule is intended to imple-
ment, extend, apply or interpret and shall be available for any
member to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.

(a) No later than forty days before the sixtieth day of
each regular session of the Legislature, the cochairman of the
legislative rule-making review committee shall submit to the
clerk of the respective houses of the Legislature copies of all
proposed legislative rules which have been submitted to the
committee pursuant to the provisions of section eleven of this
article and which have not been previously submitted to the
Legislature for study, together with the recommendations of
the committee with respect to such rules, a statement of the
reasons for any recommendation that a rule or any part of a
rule be amended, and a statement that a bill authorizing the
legislative rule has been drafted by legislative services pursuant
to section eleven of this article. The cochairman of
the committee may also submit such rules at the di-
rection of the committee at any time before or during
a special session in which consideration thereof may be ap-
propriate. The committee may withhold from its report any
proposed legislative rule which was submitted to the com-
mittee fewer than two hundred ten days before the end of
a regular session. The clerk of each house shall submit
the report to his house at the commencement of the next
session.

All bills introduced authorizing the promulgation of a rule
may be referred by the speaker of the House of Delegates and
by the president of the Senate to appropriate standing com-
mittees of the respective houses for further consideration or
the matters may be otherwise dealt with as each house or
its rules provide. The Legislature may by act authorize the
agency to adopt a legislative rule incorporating the entire
rule, or may authorize the agency to adopt a rule with any
amendments which the Legislature shall designate. The clerk
of the house originating such act shall forthwith file a copy
of any bill enacted in contemplation of this section in the
state register and with the agency proposing such rule and
the clerk of each house may prepare and file a synopsis of
legislative action during any session on any proposed rule
submitted to the house during such session for which authority
to promulgate was not by law provided during such session.

(b) If the Legislature fails during its regular session to
act upon all or part of any legislative rule which was submitted
to it by the legislative rule-making review committee during
such session, no agency may thereafter issue any rule or
directive or take other action to implement such rule or part
thereof unless and until otherwise authorized to do so.

(c) Nothing herein shall be construed to prevent the
Legislature by law from authorizing or authorizing and direct-
ing an agency to promulgate legislative rules not proposed by
the agency or upon which some procedure specified in this
chapter is not yet complete.

(d) Whenever the Legislature is convened by proclamation
of the governor, upon his own initiative or upon application
of the members of the Legislature, or whenever a regular ses-
son of the Legislature is extended or convened by the vote or
petition of its members, the Legislature may by act enacted
during such extraordinary or extended session authorize, in
whole or in part, any legislative rule whether submitted to the
legislative rule-making review committee, or not, if legislative
action on such rule during such session is a lawful order of
business.

(e) Whenever a date is required by this section to be
computed in relation to the end of a regular session of the
Legislature, such date shall be computed without regard to
any extensions of such session occasioned solely by the pro-
clamation of the governor.

(f) Whenever a date is required to be computed from or is
fixed by the first day of a regular session of the Legislature, it shall be computed or fixed in the year one thousand nine hundred eighty-four, and each fourth year thereafter without regard to the second Wednesday of January of such years.

§29A-3-13. Adoption of legislative rules; effective date.

(a) Except as the Legislature may by law otherwise provide, within sixty days after the effective date of an act authorizing promulgation of a legislative rule, the agency shall promulgate the rule only in conformity with the provisions of law authorizing and directing the promulgation of such rule.

(b) A legislative rule authorized by the Legislature shall become effective thirty days after such filing in the state register, or on the effective date fixed by the authorizing act or if none is fixed by law, such later date not to exceed ninety days, as is fixed by the agency.

(c) The secretary of state shall note in the state register the effective date of an authorized and promulgated legislative rule, and shall file such legislative rule in the state register in lieu of the proposed legislative rule previously filed pursuant to section six, article three.

§29A-3-14. Withdrawal or modification of proposed rules.

(a) Any legislative rule proposed by an agency may be withdrawn by the agency any time before passage of a law authorizing or authorizing and directing its promulgation, but no such action shall be construed to affect the validity, force or effect of a law enacted authorizing or authorizing and directing the promulgation of an authorized legislative rule or exercising compliance with such law. The agency shall file a notice of any such action in the state register.

(b) At any time before a proposed legislative rule has been submitted by the legislative rule-making review committee to the Legislature pursuant to the provisions of section twelve of this article, the agency may modify the proposed rule to meet the objections of the committee. The agency shall file in the state register a notice of its modifying action including
§29A-3-15. Emergency legislative rules; procedures for promulgation; definition.

(a) Any agency with authority to promulgate procedural or interpretive rules or propose legislative rules may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the state register and shall become effective immediately upon such filing. Such emergency rules may amend or repeal any legislative rule which by law has been specifically authorized by the Legislature but the circumstances constituting the emergency requiring such amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity. Fifteen copies of the rules and of the required statement shall be filed forthwith with the legislative rule-making review committee.

Except as provided in subsections (b) and (e) of this section, an emergency rule which is a legislative rule shall be effective until the earlier of (1) the expiration date specified by the agency in a notice filed in the state register or (2) the expiration of one hundred eighty days following the filing of the rule in the state register.

(b) An agency may extend the effective period of any emergency rule which is a legislative rule for an additional period not to exceed one hundred eighty days by filing notice of such extension in the state register if:

(1) Such notice of extension is filed not more than ten days prior to the date on which such emergency rule is otherwise scheduled to expire;
(2) The agency has, within ninety days following the filing of the emergency rule in the state register, initiated rule-making procedures for permission to promulgate a regular legislative rule to replace such emergency rule;

(3) The Legislature has not authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated; and

(4) The Legislature has not, by law, disapproved of such emergency rule.

(c) The provisions of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(d) The legislative rule-making review committee may review any emergency rule to determine (1) whether the agency has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The committee may recommend to the agency or the Legislature such action as it may deem proper.

(e) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

§29A-3-16. Legislative review of procedural rules, interpretive rules and existing legislative rules.

The legislative rule-making review committee may review any procedural rules, interpretive rules or existing legislative rules and may make recommendations concerning such rules
to the Legislature, or to the agency, or to both the Legislature and the agency.

§29A-3-17. Prior rules.

Any rule lawfully promulgated prior to the effective date of this chapter shall remain in full force and effect until:

1 (1) Such rule is expressly made ineffective by the provisions of this chapter, or

2 (2) Such rule should expire by reason of failure to refile the same as provided in section five of article two, or expires pursuant to its own terms and provisions lawfully made before the effective date of this section, or

3 (3) Such rule is repealed by the lawful act of the agency, in conformity with this chapter, or

4 (4) Such rule is invalidated by an act of the Legislature or the force and effect of another law.

ARTICLE 4. DECLARATORY RULINGS AND DECLARATORY JUDGMENTS.

§29A-4-2. Declaratory judgment on validity of rule.

(a) Any person, except the agency promulgating the rule, may have the validity of any rule determined by instituting an action for a declaratory judgment in the circuit court of Kanawha County, West Virginia, when it appears that the rule, or its threatened application, interferes with or impairs or threatens to interfere with or impair, the legal rights or privileges of the plaintiff or plaintiffs. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the plaintiff or plaintiffs has or have first requested the agency to pass upon the validity of the rule in question.

(b) The court shall declare the rule invalid if it finds that the rule violates constitutional provisions or exceeds the statutory authority or jurisdiction of the agency or was adopted without compliance with statutory rule-making procedures or is arbitrary or capricious, or that, in the case of an emergency rule adopted pursuant to section fifteen, article three of this chapter, action under said section fifteen was not justified.
(c) When the invalidity of a rule has been so declared, the agency shall, within thirty days after such declaratory judgment has been entered, acquiesce therein and modify or rescind such invalidated rule in accord with the requirement of such declaratory judgment unless the agency promptly, and in any event within such thirty-day period, notifies the plaintiff or plaintiffs of its intention to apply for an appeal to the supreme court of appeals from such declaratory judgment pursuant to section one, article six of this chapter. In the event such agency shall thereafter make timely application for such appeal, the acquiescence of the agency in the invalidity of such rule shall not be required until thirty days after timely applications for such appeal have been refused or within thirty days after the appeal has been dismissed or otherwise disposed of in the supreme court of appeals by an affirmance of the judgment invalidating said rule.

CHAPTER 122

(S. B. 61—By Mr. Williams)

[Passed March 13, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the registration procedure for securities broker-dealers, agents and investment advisers; increasing fees for registration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS.


(a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application together with a consent to
service of process pursuant to subsection (g), section four hundred
fourteen, article four of this chapter. The application shall contain
whatever information the commissioner by rule requires concerning
such matters as (1) the applicant’s firm and place of
organization; (2) the applicant’s proposed method of doing
business; (3) the qualifications and business history of the
applicant; in the case of a broker-dealer or investment
adviser, the qualifications and business history of any
partner, officer or director, any person occupying a similar
status or performing similar functions, or any person directly
or indirectly controlling the broker-dealer or investment
adviser; and, in the case of an investment adviser, the
qualifications and business history of any employee; (4) any
injunction or administrative order or conviction of a
misdemeanor involving a security or any aspect of the
securities business and any conviction of a felony; and (5) the
applicant’s financial condition and history. The
commissioner may by rule or order require an applicant for
initial registration to publish an announcement of the
application as a Class I legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this
code, and the publication area or areas for such publication
shall be specified by the commissioner. If no denial order is in
effect and no proceeding is pending under section two
hundred four of this article, registration becomes effective at noon
of the thirtieth day after an application is filed. The commissioner
may by rule or order specify an earlier effective date, and he
may by order defer the effective date until noon of the
thirtieth day after the filing of any amendment. Registration
of a broker-dealer automatically constitutes registration of
any agent who is a partner, officer or director, or a person
occupying a similar status or performing similar functions, as
designated by the broker-dealer in writing to the
commissioner and approved in writing by the commissioner.
(b) Every applicant for initial or renewal registration shall
pay a filing fee of one hundred fifty dollars in the case of a
broker-dealer, thirty dollars in the case of an agent, and one
hundred dollars in the case of an investment adviser. When
application is denied or withdrawn, the commissioner shall
retain all of the fee.
(c) A registered broker-dealer or investment adviser may
file an application for registration of a successor, whether or
not the successor is then in existence, for the unexpired
portion of the year. A filing fee of twenty dollars shall be paid.

(d) The commissioner may by rule require a minimum capital for registered broker-dealers and investment advisers.

(e) The commissioner may by rule require registered broker-dealers, agents and investment advisers to post surety bonds in amounts up to ten thousand dollars, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required.

No bond may be required of any registrant whose net capital, which may be defined by rule, exceeds twenty-five thousand dollars. Every bond shall provide for suit thereon by any person who has a cause of action under section four hundred ten, article four of this chapter and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.


capital for registered broker-dealers and investment advisers.

No bond may be required of any registrant whose net capital, which may be defined by rule, exceeds twenty-five thousand dollars. Every bond shall provide for suit thereon by any person who has a cause of action under section four hundred ten, article four of this chapter and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

\[\text{AN ACT to amend and reenact sections four, five, six and ten, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to homestead property tax exemptions; expanding the methods of documentation of permanent and total disability; eliminating the requirement that a claimant must file annually for exemption on the basis of permanent and total disability; providing that claimant must certify that he will notify assessor if he is no longer permanently and totally disabled; authorizing the assessor to deny exemptions originally granted upon belief that the claimant is ineligible for an exemption; providing for an appeal from the subsequent denial of an exemption by the assessor; providing for criminal penalties; and providing for res-}\]
titution of all state taxes not paid due to improper exemp-
tion claim with interest thereon at legal rate until paid.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six and ten, article six-b, 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 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-4. Claim for exemption; renewals; waiver of exemp-
tion.

1 (a) General.—No exemption shall be allowed under
this article unless a claim of exemption is filed with the
assessor of the county in which the homestead is located,
on or before the first day of October following the July
first assessment day. In the case of sickness, absence or
other disability of the claimant, the claim may be filed by
the claimant or his duly authorized agent.

8 (b) Claims for disability exemption.—Each claim for
exemption based on the owner being permanently and
totally disabled shall include one of the following forms of
documentation in support of said claim: (1) A written
certification by a doctor of medicine or doctor of osteop-
athy licensed to practice their particular profession in this
state that the claimant is permanently and totally dis-
abled; (2) A written certification by the social security
administration that the claimant is currently receiving
benefits for permanent and total disability; (3) A copy of
the letter from the social security administration origi-
nally awarding benefits to the claimant for permanent and
total disability and a copy of a current check for such
benefits, marked void: (4) A current social security
health insurance (medicare) card in the name of the
claimant and a copy of a current check to the claimant,
marked void, for benefits from the social security admin-
istation for permanent and total disability; (5) A written certification signed by the veterans administration certifying that a person is totally and permanently disabled; (6) Any lawfully recognized workmen's compensation documentation certifying that a person is totally and permanently disabled; (7) Any lawfully recognized pneumoconiosis documentation certifying that a person is totally and permanently disabled; or (8) Any other lawfully recognized documentation certifying that a person is totally and permanently disabled.

(c) Renewals.

(1) Senior citizens.—If the claimant is age sixty-five or older, then after the claimant has filed for exemption once with his assessor, there shall be no need for that claimant to refile unless the claimant moves to a new homestead.

(2) Disabled.—If the claimant is permanently and totally disabled, then after the claimant has filed for the exemption once with his assessor, and signed a statement certifying that he will notify the assessor if he is no longer eligible for an exemption on the basis of being permanently and totally disabled and that the claimant will notify the assessor within thirty days of the discontinuance of the receipt of benefits for permanent and total disability, if the claimant originally claimed receipt of said benefits to document his claim for exemption, there shall be no need for that claimant to refile, unless the claimant moves to a new homestead.

(3) Waiver of exemption.—Any person not filing his claim for exemption on or before the first day of October shall be deemed to have waived his right to exemption for the next tax year.

§11-6B-5. Determination; notice of denial of claim or exemption.

(a) The assessor shall as soon as practicable after a claim for exemption is filed, review that claim and either approve or deny it. If the exemption is denied, the assessor shall promptly, but not later than the first day of Novem-
ber, serve the claimant with written notice explaining why the exemption was denied, and furnish a form for filing with the county commission should the claimant desire to take an appeal. The notice required or authorized by this section shall be served on the claimant or his authorized representative either by personal service or by certified mail.

(b) In the event that the assessor shall have information sufficient to form a reasonable belief that a claimant, after having been originally granted an exemption, is not eligible for said exemption, he shall deny the exemption on the next assessment date and shall promptly, but no later than the first day of November, serve the claimant with written notice explaining the reasons for the denial and furnish a form for filing with the county commission should the claimant desire to take an appeal.

§11-6B-6. Appeals procedure.

(a) Notice of appeal; thirty days.—Any claimant aggrieved by the denial of his claim for exemption or the subsequent denial of his exemption, may appeal to the county commission, within thirty days after receipt of written notice explaining why the exemption was denied.

(b) Review; determination; appeal.—The county commission shall complete its review and issue its determination within sixty days after receipt of the notice of appeal from the claimant. In conducting its review, the county commission may hold a hearing on the claim. The assessor or the claimant may apply to the circuit court of the county for review of the determination of the county commission in the same manner as is provided for appeals from the county commission in section twenty-five, article three of this chapter.

§11-6B-10. Criminal penalties; restitution.

(a) False or fraudulent claim for exemption.—Any claimant who willfully files a fraudulent claim for exemption, and any person who knowingly assisted in the preparation or filing of such fraudulent claim for exemption or who knowingly supplied information upon which the
fraudulent claim was prepared or allowed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred and fifty dollars, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

(b) Fraudulent assessments.—(1) An assessor or employee of a county who, with intent to defraud the state, assesses the value of the eligible claimant's homestead for an amount which is in excess of its true and actual value or is in excess of the assessed value of similar property in his county, in order to increase the cost of the homestead exemption to his county and to thereby secure a larger reimbursement from the state, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned. Each violation of this subsection shall constitute a separate offense.

(2) An assessor or employee of a county who, with intent to defraud a claimant, assesses the value of the eligible claimant's homestead for an amount which is in excess of its true and actual value or is in excess of the assessed value of similar property in his county, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned. Each violation of this subsection shall constitute a separate offense.

(c) Failure to notify assessor.—A claimant or his legal representative who, prior to the next first day of July, fails to notify the assessor of the county wherein property subject to the homestead property tax exemption is located, that title to that property or a portion thereof was transferred by deed, grant, sale, gift, will or by the laws of this state regulating descent and distribution, that the property is no longer used and occupied for residential purposes exclusively by the claimant or that the claimant
is no longer permanently and totally disabled, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year or both.

(d) In addition to the criminal penalties provided above, upon conviction of any of the above offenses, the court shall order that the defendant make restitution unto the state for all taxes not paid due to an improper exemption for the claimant and interest thereon at the legal rate until paid.

CHAPTER 124
(S. B. 407—By Mr. McGraw, Mr. President)

[Passed March 13, 1982; in effect April 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact sections two-a and two-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to business and occupation taxes upon the production of timber and the manufacturing of wood products; and providing for certain deductions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

§11-13-2b. Manufacturing, compounding or preparing products; processing of food excepted.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

1 Upon every person exercising the privilege of engaging or continuing within this state in the business of severing,
extracting, reducing to possession and producing for sale, profit or commercial use any natural resource products, the amount of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the respective rates and in the classifications as follows:

(1) Coal, three and five-tenths percent. The value of coal mined and produced in this state in the exercise of the production privilege, taxable at the rates herein and in section two-l in conjunction with section two of this article, shall include in addition to the value of the mined product those values arising from the ordinary processing and preparing of such coal for sale or commercial use, where such processing and preparing are done by the producer of the coal. Ordinary processing and preparing of coal activities by the producer thereof are considered an integral part of the production privilege and include crushing, washing, cleaning, drying, sorting, sizing, blending, loading for shipment and the like applied in the ordinary mining of such products to make the same salable and commercially usable. The values taxable herein and attributable to such ordinary processing and preparing of coal activities will not be again taxable under the provisions of section two-b of this article to the producer of such coal. The processing associated with the production of all other natural resources referred to in this section and more sophisticated processing and preparing of coal activities shall be subject to the other applicable provisions of this article.

(2) Limestone or sandstone, quarried or mined, two and two-tenths percent.

(3) Oil, four and thirty-four one-hundredths percent.

(4) Natural gas, in excess of the value of five thousand dollars, eight and sixty-three one-hundredths percent.

(5) Blast furnace slag, four and thirty-four one-hundredths percent.

(6) Sand, gravel or other mineral product not quarried or mined, four and thirty-four one-hundredths percent.
(7) Timber, two and five-tenths percent. Severing and delimbing of timber by the producer thereof is the production privilege. The values taxable herein and attributable to such production of timber will not again be taxable under the provisions of section two-b of this article to the producer of such timber.

(8) Other natural resource products, two and eighty-six one-hundredths percent.

The measure of this tax is the value of the entire production in this state, regardless of the place of sale or the fact that the delivery may be made to points outside the state.

For the purpose of the production of oil classification, and the production of natural gas classification, as set forth in this section, multiple co-owners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after severance, extraction, reduction to possession and production, except royalty recipients, in kind, shall be deemed to be a "group or combination acting as a unit" and one "person," as defined in section one of this article, if not otherwise defined therein, whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor driller or operator's services; and not withstanding provisions of private contracts for separate deposit for gross receipts in separate members' accounts or for members of such group or combination to take in kind any proportionate part of such natural resources.

Lessees, sublessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors of a part of such natural resources as rents or royalties. Recipients of royalties or rents, in kind, in cash or otherwise are taxable on their gross income pursuant to the provisions of section two-i of this article.
§11-13-2b. Manufacturing, compounding or preparing products; processing of food excepted.

Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities, or electric power produced by public utilities or others and not taxed under other provisions of this article, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), the amount of the tax to be equal to the value of the article, substance, commodity or electric power or newspaper, manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of eighty-eight one-hundredths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state. However, with respect to the manufacturing, compounding or preparing for sale of timber or timber products, the measure of this tax is the value of the entire timber product manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state but such value shall not include the value of any timber or timber products used as ingredients, components or elements of such timber products. However, the dressing and processing of food by a person, firm or corporation, which food is to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products on a wholesale basis shall be subject to the same tax as is imposed on the business of selling at wholesale as provided in section two-c.

It is further provided, however, that in those instances
in which the same person partially manufactures, com-
ounds or prepares products within this state and par-
tially manufactures, compounds or prepares such prod-
ucts outside of this state the measure of his tax under
this section shall be that proportion of the sale price of
the product that the payroll cost of manufacturing within
this state bears to the entire payroll cost of manufactur-
ing the product; or, at the option of the taxpayer, the
measure of his tax under this section shall be the pro-
portion of the sales value of the articles that the cost of
operations in West Virginia bears to the full cost of manu-
ufacture of the articles.

CHAPTER 125
(S. B. 334—By Mr. McGraw, Mr. President)

[Passed March 8, 1982; in effect July 1, 1982. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article fourteen-
a, chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to en-
forcement powers of the tax commissioner and his agents
and employees; enforcement powers of the commissioner
of the West Virginia department of highways and his
agents and employees; enforcement powers of the public
service commission and its agents and employees, and the
bonds of any such agents and employees, in the enforce-
ment of chapter eleven, article fourteen-a, motor carrier
road tax.

Be it enacted by the Legislature of West Virginia:

That section twelve, article fourteen-a, 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 14A. MOTOR CARRIER ROAD TAX.

1 (a) Any employee or agent of the tax commissioner or
2 any employee or agent of the commissioner of the West
Virginia department of highways or any employee or
agent of the West Virginia public service commission so
authorized by the tax commissioner or the commissioner
of the West Virginia department of highways or the West
Virginia public service commission shall have all the law-
ful powers delegated to members of the department of
public safety to enforce the provisions of this article,
when bonded as hereinafter provided in this section.

(b) Any such employee or agent so authorized by
either the tax commissioner or by the commissioner of
the West Virginia department of highways or by the West
Virginia public service commission shall execute a bond
with security in the sum of thirty-five hundred dollars,
payable to the state of West Virginia, conditioned for the
faithful performance of his duties, as such, and such bond
shall be approved as to form by the attorney general, and
the same shall be filed with the secretary of state and
preserved in his office.

(c) The provisions of this bill shall apply notwith-
standing section five, article ten of this chapter.

CHAPTER 126
(Com. Sub. for S. B. 400—By Mr. McGraw, Mr. President)

[Passed Marcr 2, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and twelve,
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; and amending
the definition of West Virginia adjusted gross income by
adding additional modifications increasing and reducing
federal adjusted gross income in determining West Vir-
ginia adjusted gross income.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 21. PERSONAL INCOME TAX.**


§11-21-12. West Virginia adjusted gross income of resident individual.


1. Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-two, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-one, and thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred eighty-two, shall be given effect.

§11-21-12. West Virginia adjusted gross income of resident individual.

1. (a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

6. (b) Modifications increasing federal adjusted gross income.—There shall be added to federal adjusted gross income the following items, except that modifications (5), (6) and (7) shall be required only with respect to tax periods ending on or after the first day of January, one thousand nine hundred eighty-two:
(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year; and

(7) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: three-year property—no modification; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year real
property—thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method.

(c) Modifications reducing federal adjusted gross income.—There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumental-ity of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to forty per centum of such portion of the gain;

(4) The amount of any refund or credit for over-payment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contribu-tions and any other benefit received under the public employees retirement system, the department of public safety death, disability and retirement fund, the state teachers retirement system, and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities
(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any police or firemen's retirement system, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(7) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That
(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions; and

(9) Any pay or allowances received, after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five, as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars.

(d) Modification for West Virginia fiduciary adjustment.—There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners.—The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen of this article.

(f) Husband and wife.—If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.
AN ACT to amend and reenact sections three and six, 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; and amending the definition of West Virginia taxable income by adding an additional adjustment increasing federal taxable income in determining West Virginia taxable income.

Be it enacted by the Legislature of West Virginia:

That sections three and six, 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.


§11-24-6. Adjustments in determining West Virginia taxable income.


(a) General.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-two, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-one, and thereafter, but no amendment to laws of the United States made on or after
the first day of January, one thousand nine hundred eighty-two, shall be given effect.

(b) *Certain terms defined.*—For purposes of this article:

1. The term "tax commissioner" means the tax commissioner of the state of West Virginia or his delegate.

2. The term "corporation" means and includes a joint-stock company or any association which is taxable as a corporation under the federal income tax law.

3. The term "domestic corporation" means any corporation organized under the laws of West Virginia.

4. The term "foreign corporation" means any corporation other than a domestic corporation.

5. The term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

6. The term "taxable year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

7. The term "taxpayer" means a corporation subject to the tax imposed by this article.

8. The term "tax" includes, within its meaning, interest and penalties unless the intention to give it a more limited meaning is disclosed by the context.

9. The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

10. The term "compensation" means wages, salaries, commissions and any form of remuneration paid to employees for personal services.

11. The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes.
adjusted as provided in section six: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven of this article.

(12) The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(13) The term "nonbusiness income" means all income other than business income.

(14) The term "public utility" means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia.

(15) The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term "this state" means the state of West Virginia.

§11-24-6. Adjustments in determining West Virginia taxable income.

(a) General.—In determining the West Virginia taxable income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted by the items specified in this section.

(b) Adjustments increasing federal taxable income.—There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items, except that adjustment (5) shall be required only with respect to tax periods ending
after the thirty-first day of December, one thousand nine hundred eighty-one:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof, other than this state and its political subdivisions and authorities, unless made exempt by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal taxable income and not credited against federal income tax, and the taxes imposed by this state for which credit against the taxes imposed by section four is allowed by section nine;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal taxable income; and

(5) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal taxable income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: three-year property—no modification; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year real property—thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method.
(c) Adjustments decreasing federal taxable income.—
There shall be subtracted from federal taxable income:

1. Interest income on obligations of the United States
   and its possessions to the extent includible in gross in-
   come for federal income tax purposes;

2. Interest or dividend income on obligations or securi-
   ties of any authority, commission or instrumentality of
   the United States to the extent includible in gross in-
   come for federal income tax purposes, but exempt from
   state income taxes under the laws of the United States;

3. Any gain from the sale or other disposition of
   property having a higher fair market value on the first
   day of July, one thousand nine hundred sixty-seven, than
   the adjusted basis at said date for federal income tax
   purposes: Provided, That the amount of this adjustment is
   limited to that portion of any such gain which does not
   exceed the difference between such fair market value and
   such adjusted basis;

4. The amount of any refund or credit for overpay-
   ment of income taxes imposed by this state or any other
   taxing jurisdiction, to the extent properly included in
   gross income for federal income tax purposes;

5. The amount of dividends received, to the extent
   included in federal taxable income; and

6. Thirty-seven and one-half percent of the excess
   of net long-term capital gain over net short-term capital
   loss as defined in the laws of the United States.

(d) Adjustment resulting from recomputation of net
operating loss deduction.—In determining the West Vir-
ginia taxable income of a corporation entitled to a net
operating loss deduction for the taxable year for federal
income tax purposes, there shall be added to or subtracted
from the federal taxable income the amount of an ad-
justment reflecting a recomputation of such net operating
loss deduction in which the adjustments required by
subsections (b) and (c) are made for each taxable year
involved in the computation of such net operating loss
deduction.
(e) Special adjustments for expenditures for water and air pollution control facilities.—

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be—

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities and air pollution control facilities as defined in section 48(h)(12)

(B) and (C) of the Internal Revenue Code, and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope and application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with section seven.
AN ACT to amend and reenact section thirteen, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the publication and posting of delinquent tax lists; and providing notice by certified mail to all delinquent landowners.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two, 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 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.


1 A copy of each of the delinquent lists shall be posted at the front door of the courthouse of the county at least two weeks before the session of the county commission at which they are to be presented for examination. At the same time a copy of each list shall be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Only the aggregate amount of the taxes owed by each person need be published. In addition to such posting and publication, the sheriff shall send a notice by certified mail to the last known address of each person whose taxes are delinquent notifying such person of the delinquency: Provided, That if the address of the person whose taxes are delinquent is different from the address of the location of the property, notice shall also be sent to the location of the property. To cover the costs of preparing, publishing and posting the delinquent lists and mailing notice to the landowner, a charge of five dollars shall be
added to the taxes and interest already due on each item listed.

Any person whose taxes were delinquent on May first, may have his name removed from the delinquent lists prior to the time the same is delivered to the newspapers for publication and the mailing of the above required notice, by paying to the sheriff the full amount of the taxes and costs owed by such person at the date of such redemption. The sheriff shall collect a charge of only fifty cents if redemption is made before the list is delivered for publication. Costs collected by the sheriff hereunder which are not expended for publication shall be paid into the general county fund.

CHAPTER 129
(H. B. 1769—By Mr. Schifano)

[Passed March 2, 1982; in effect ninety days 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 five, relating to the office of child support enforcement; authorizing the provision of child support services to persons not otherwise eligible for receipt of public assistance; fees for services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-5. Services to persons not otherwise eligible.

The department of welfare may make available the services established under the provisions of section four of this article, to any person not eligible for receipt of public assistance upon
application by such person: Provided, That the department may
not require such person to use its services. These services may
include, but need not be limited to, the following: Location of
the responsible parent whose whereabouts are unknown, col-
lection of child support and maintenance moneys owed, and
distribution of support and maintenance moneys paid.

The department may charge a reasonable fee to nonpublic
assistance persons for the provision of services and, when the
department has provided services for the collection of support
and maintenance, may charge a reasonable fee to the person
responsible for the support and maintenance. The commis-
sioner shall establish by regulations the amount of such fees,
not in excess of maximum amounts permitted by applicable
federal law, which regulations may be amended and supple-
mented from time to time.

CHAPTER 130

(H. B. 1771—By Mr. Steptoe and Mr. Gilliam)

[Passed February 24, 1982: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter nine 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 department of welfare and granting them the
authority to apply for subpoenas and subpoenas duces tecum
when investigating medical assistance programs.

Be it enacted by the Legislature of West Virginia:

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

§9-5-8a. Authority to subpoena witnesses and documents when
investigating the provision of medical assistance pro-
grams.

The commissioner and every duly appointed hearing ex-
aminer shall have the power to apply, on behalf of any party,
to the circuit court of the county in which the hearing is to be held, or the circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel the attendance of witnesses or the production of documents, before any hearing or administrative tribunal convened to consider suspension or termination of any person or corporation from providing services under the medical assistance programs administered by the department of welfare. The application for a subpoena duces tecum shall state with particularity any papers or documents requested and upon hearing, the applicant or party shall notify the court or judge, as the case may be, of the necessity therefor in such hearing. The court or judge thereof, prior to issuing the requested subpoena or subpoena duces tecum, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. The party who applies for the subpoena or subpoena duces tecum shall pay the sheriff's fees required for service of these documents.

CHAPTER 131
(S. B. 10—By Mr. Boettner)

[Passed February 16, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article fifteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to officers, boards and commissions; white cane law; equal right to use public facilities; establishing the same provision for "hearing ear dogs" that seeing eye dogs enjoy.

Be it enacted by the Legislature of West Virginia:

That section four, article fifteen, 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 15. WHITE CANE LAW.

§5-15-4. Equal right to use public facilities.

1 (a) Blind persons shall have the same right as persons with normal sight to the full and free use of the highways, roads, streets, sidewalks, walkways, public buildings, public facilities, and other public places.

2 (b) Blind persons are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, hotels, lodging places, restaurants, other places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

3 (c) Every blind person and every deaf person shall have the right to be accompanied by a guide dog, wearing a harness, especially trained for the purpose, which serves as a guide, leader or listener in any of the places, accommodations or conveyances specified in subsection (b) of this section without being required to pay an extra charge for the admission of such guide dog, but the blind or deaf person shall, upon request, present for inspection credentials issued by an accredited school for training guide dogs. The blind or deaf person shall be liable for any damage done by such guide dog to the premises or facilities or to persons using such premises or facilities. Such dog shall not occupy a seat in any public conveyance and shall be upon a leash while using the facilities of a common carrier.
CHAPTER 132

(H. B. 1938—By Mr. Speaker, Mr. See)

[Passed March 13, 1932; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workmen’s compensation benefits; permitting the commissioner of workmen’s compensation to have access to certain tax and employment security information; penalty for wrongful disclosure of the information obtained; costs of compilation and production; exemption from the freedom of information act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-2. Commissioner to be furnished information by employers, state tax commissioner and commissioner of the department of employment security; secrecy of information; examination of employers, etc.; violation a misdemeanor.

1 (a) Every employer shall furnish the commissioner, upon request, all information required by him to carry out the purposes of this chapter. The commissioner, or any person employed by the commissioner for that purpose, shall have the right to examine under oath any employer or officer, agent or employee of any employer.

7 (b) Notwithstanding the provisions of any other statute, specifically, but not exclusively, section five, article ten, chap-
ter eleven of this code, and section eleven, article ten, chapter twenty-one-a of this code, the commissioner of workmen's compensation may receive the following information:

(1) Upon written request to the state tax commissioner; the names, addresses and other identifying information of all businesses filing state business and occupational tax returns and/or receiving a business franchise registration certificate.

(2) Upon written application to the commissioner of the department of employment security; the names, addresses and other identifying information of all employing units filing reports and information pursuant to section eleven, article ten, chapter twenty-one-a of this code as well as information contained in those reports regarding the number of employees employed and the gross quarterly wages paid by each employing unit.

(c) All information acquired by the workmen's compensation commissioner pursuant to subsection (b) of this section shall be used only for auditing premium payments. Any officer or employee of this state who uses the aforementioned information in any manner other than the one stated herein, or who shall divulge or make known in any manner any of the aforementioned information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with cost of prosecution.

(d) Reasonable costs of compilation and production of any information made available pursuant to subsection (b) of this section shall be charged to the workmen's compensation commissioner.

(e) Information acquired by the workmen's compensation commissioner pursuant to subsection (b) of this section shall not be subject to disclosure under the provisions of chapter twenty-nine-b of this code.
CHAPTER 133
(H. B. 1939—By Mr. Speaker, Mr. See)

[Passed March 13, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to interest on past due premium payments to the workmen’s compensation fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.


1 Payments unpaid on the date on which due and payable, as prescribed by the commissioner, shall after the first fifteen days bear interest at the rate of two percent per month until payment plus accrued interest is received by the commissioner.

5 Interest collected pursuant to this section shall be paid into the workmen’s compensation fund.

CHAPTER 134
(Com. Sub. for H. B. 1109—By Mr. Tompkins and Mr. Hatcher)

[Passed February 4, 1982; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-a, 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 two, relating to prohibited discriminatory practices concerning medical coverage; prohibiting an employer from discontinuing or decreasing medical coverage for a previously covered em-
ployee during the entire period for which he is entitled to draw temporary medical benefits unless coverage for all employees is so discontinued or decreased; and providing a private remedy for the disabled employee.

Be it enacted by the Legislature of West Virginia:

That article five-a, 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 two, to read as follows:

ARTICLE 5A. DISCRIMINATORY PRACTICES.


1 Any employer who has provided any type of medical insurance for an employee or his dependents by paying premiums, in whole or in part, on an individual or group policy shall not cancel, decrease his participation on behalf of the employee or his dependents, or cause coverage provided to be decreased during the entire period for which that employee during the continuance of the employer-employee relationship is claiming or is receiving benefits under this chapter for a temporary disability. If the medical insurance policy requires a contribution by the employee, that employee must continue to make the contribution required, to the extent the insurance contract does not provide for a waiver of the premium.

2 Nothing in this section shall prevent an employer from changing insurance carriers or cancelling or reducing medical coverage if the temporarily disabled employee and his dependents are treated with respect to insurance in the same manner as other similarly classified employees and their dependents who are also covered by the medical insurance policy.

3 This section provides a private remedy for the employee which shall be enforceable in an action by the employee in a circuit court having jurisdiction over the employer.
AN ACT to establish the emergency service authority for Raleigh County, to provide such authority with power to plan and coordinate all emergency operations for Raleigh County, to provide for appointment and compensation of members of the authority, and to provide for the support, maintenance and operation of such emergency services.

Be it enacted by the Legislature of West Virginia:

EMERGENCY SERVICE AUTHORITY FOR RALEIGH COUNTY.

§1. Emergency service authority for Raleigh County created; functions.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

§3. A body corporate.

§4. Support, maintenance and operation.

§5. Effect of future amendments of general law.


§1. Emergency service authority for Raleigh County created; functions.

There is hereby created an emergency service authority for Raleigh County, which shall plan and coordinate all emergency operations for Raleigh County in accordance with article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and with other provisions of general law relating to emergency services.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

The authority shall consist of five members to be appointed before the first day of July, one thousand nine hundred eighty-two. Three members shall be appointed by the Raleigh county commission, one member for a term of one year, one member for a term of two years, and one member for a term of three years. No more than two of the members appointed by the county commission may be from the same
political party. Two members shall be appointed by the
governing body of Beckley, one member for a term of two
years, and one member for a term of three years. The two
members appointed by the governing body of Beckley shall
be from different political parties. The initial terms of office
shall commence on the first day of July, one thousand nine
hundred eighty-two. Each successor member shall be ap­
pointed for a term of two years, except that any person ap­
pointed to fill a vacancy occurring before the expiration
of the term shall serve only for the unexpired portion thereof.
Any member of the authority shall be eligible for reappoint­
ment and the county commission may remove any member
for cause. There shall be an annual meeting of the authority
on the second Monday in July in each year and a monthly
meeting on the day in each month which the authority may
designate in its bylaws. A special meeting may be called
by the president, the secretary or any two members of the
authority and shall be held only after all of the members
are given notice thereof in writing. At all meetings three
members shall constitute a quorum and at each annual
meeting of the authority it shall elect a president, a vice
president, a secretary and a treasurer. The authority shall
adopt such bylaws, rules and regulations as are necessary
for its own guidance and for the operation and management
of Raleigh County emergency operations. The authority shall
have all the powers necessary, convenient and advisable for
the proper operation, equipment and management of emer­
gency operations in Raleigh County; and except as otherwise
especially provided in this act, shall have the powers and be
subject to the duties which are conferred and imposed, re­
spectively, upon local organizations for emergency services
by article five, chapter fifteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, and by
other provisions of general law relating to emergency services.

Each member of the authority shall be compensated month­
ly by the governing body which appointed such member in an
amount to be fixed by such governing body.

§3. A body corporate.

The authority hereby created shall be a corporation. As
such it may contract and be contracted with, sue and be
sued, plead and be impleaded, and shall have and use a
common seal.

§4. Support, maintenance and operation.

The governing bodies of Raleigh County and Beckley may
provide for the support, maintenance and operation of
emergency operations by the levying of taxes and by the ap-
propriation and expenditure of public funds in accordance
with article five, chapter fifteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, and with
other provisions of general law.

§5. Effect of future amendments of general law.

Amendments to article five, chapter fifteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, and other general laws shall control this act only
to the extent that they do not conflict with the special
features hereof, or unless the intent to amend this act is clear
and unmistakable.


If any provision hereof is held invalid, such invalidity shall
not affect other provisions hereof which can be given effect
without the invalid provision, and to this end the provisions
of this act are declared to be severable.

CHAPTER 136
(H. B. 2019—By Mr. Wooton)

[Passed March 11, 1982; in effect from passage. Approved by the Governor.]

AN ACT to establish the Raleigh County recreation authority, to
provide such authority with power to operate, to provide for
appointment and compensation of members of the authority.
Be it enacted by the Legislature of West Virginia:

RALEIGH COUNTY RECREATION AUTHORITY.

§1. Raleigh County recreation authority created; functions.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

§3. A body corporate.

§4. Lake Stephens excepted.

§5. Support, maintenance and operation.


§1. Raleigh County recreation authority created; functions.

There is hereby created a Raleigh County recreation authority. The function of the authority shall be to establish, operate and manage recreational facilities for the benefit of the citizens of Raleigh County.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

The authority shall consist of five members to be appointed by the Raleigh County commission. Such members shall be appointed and such authority shall commence operation on or before the first day of July, one thousand nine hundred eighty-two. No more than three members shall be from the same political party. One member shall be appointed for a term of five years, one member for a term of four years, one member for a term of three years, one member for a term of two years and one member for a term of one year. The initial terms of office shall commence on the first day of July, one thousand nine hundred eighty-two. Each successor member shall be appointed for a term of five years, except that any person appointed to fill a vacancy occurring before the expiration of the term shall serve only for the unexpired portion thereof. Any member of the authority shall be eligible for reappointment and the county commission may remove any member for cause. There shall be an annual meeting of the authority on the second Monday in July in each year and a monthly meeting on the day in each month which the authority may designate in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and shall be held only
after all of the members are given notice thereof in writing.
At all meetings three members shall constitute a quorum
and at each annual meeting of the authority it shall elect
a president, a vice president, a secretary and a treasurer.
The authority shall adopt such bylaws, rules and regula-
tions as are necessary for its own guidance. The authority
shall have all the powers necessary, convenient and ad-
visable to effectuate the purposes of this act.

Each member of the authority shall be compensated monthly
by the county in an amount to be fixed by the county com-
mmission.

§3. **A body corporate.**

The authority hereby created shall be a corporation. As
such it may contract and be contracted with, sue and be
sued, plead and be impleaded, and shall have and use a com-
mon seal.

§4. **Lake Stephens excepted.**

The recreation authority hereby created shall not be respon-
sible for recreational facilities located or situate on or near
Lake Stephens or under the control or jurisdiction of the
Lake Stephens recreation commission.

§5. **Support, maintenance and operation.**

The county commission of Raleigh County shall provide
for the support, maintenance and operation of the recrea-
tional facilities under the jurisdiction of the authority hereby
created.

§6. **Severability.**

If any provision hereof is held invalid, such invalidity shall
not affect other provisions hereof which can be given effect
without the invalid provision, and to this end the provisions of
this act are declared to be severable.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 18
(By Mr. Speaker, Mr. See, and Mr. Farley)

[Adopted March 13, 1982.]

Directing the Joint Committee on Government and Finance to create a Tax Study Commission to review and consider all phases of the tax structure of the State, to develop recommendations for improvements, and to report back to the Legislature.

WHEREAS, Various reports, publications and study groups have emphasized that the principal sources of tax revenues of the State of West Virginia were conceived originally as temporary or emergency revenue measures in the early nineteen hundred thirties to meet the dire economic conditions then prevailing; and

WHEREAS, The changed economic conditions of industry, labor and commerce, and the changes in present day standards of living, including necessary social programs, health coverages, providing for the welfare of our disadvantaged citizens, creation of greater employment and attraction and retention of new and existing industry and business, all warrant a new look and review of our presently constituted tax structure; and

WHEREAS, Our schools, road systems and programs for the health and welfare of our citizens are supported largely by state taxation; and

WHEREAS, Much criticism has been and is being continually directed at our tax structure as being inequitable, regressive and as not providing for a business climate conducive to attracting new industry or retention of existing industry, to the generation of development, employment and creation of payroll and to a fair sharing and distribution of the tax burden by all of our people; and

WHEREAS, The application of our constitutional tax limitation on real and personal property presents a factor needing new examination in light of increased funding requirements; and
Whereas, Counties and municipalities, under our amended constitutional provisions permitting state taxes to be levied and dedicated for their use and benefit, have sought revenue aid from state taxation and such dedication of a portion or all of such tax; creating a much closer tax relationship between the State and such political subdivisions; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance create a Tax Study Commission;

That such commission shall consist of fifteen members: five members to be appointed by the President of the Senate, not more than three members so appointed to be members of the Senate, with no more than two of such members to be of the same political party, and two members to be representative, private citizens, not of the same political party; five members to be appointed by the Speaker of the House of Delegates, not more than three members so appointed to be members of the House of Delegates, with no more than two of such members to be of the same political party, and two members to be representative, private citizens, not of the same political party; and five members to be appointed by the Governor, with not more than three members so appointed to be members of the same political party, and with at least two members to be representative, private citizens. The representative, private citizens may include persons with background, knowledge or experience in taxation, economics, current conditions of business and industry, labor, commerce, agriculture, or other activities fundamental to our business environment; and such other persons found eligible by the appointing authority because of sound judgment and deep interest may be appointed as representative citizens.

The President of the Senate, Speaker of the House of Delegates and the Governor shall confer together on their respective appointments prior to the same being made in order to ensure that the membership of the Tax Study Commission is reasonably diverse as to experience, knowledge, interest and representation.

The commission shall elect one of its members as chairman, one as vice chairman and other officers as it deems appropriate. Vacancies on the commission shall be promptly filled by the original appointing authority.
The commission may employ such professional, clerical and technical assistants as it deems necessary in order to perform its duties, and may request information from any state officer or agencies in order to assist the performance of its duties.

The commission shall meet in Charleston or elsewhere as it may deem necessary or appropriate, and it shall convene at least quarterly and at such other times as its duties may require. The first meeting shall be called jointly, by the President of the Senate and the Speaker of the House of Delegates, one of whom shall preside temporarily and until a chairman is elected.

Compensation shall be paid and actual and necessary expenses shall be paid or reimbursed from Legislative appropriations to the Joint Committee on Government and Finance, but no such compensation and expenses shall be incurred, paid or reimbursed without first obtaining the approval of the Joint Committee on Government and Finance.

The commission is empowered to find and determine, through all competent channels and sources of factual data research, the existing and potential proper sources of tax revenue at both the state and local levels, in order to provide for recommended improvements in our state tax structure and as such structure relates to the sources and levies of political subdivisions of the State.

It shall be the duty of the commission to:

(a) Confer with all officers of state or local government, or their representatives, having the responsibility of collecting or administering any part of the taxes or other revenues, and any other matters deemed relevant to the study program of the commission.

(b) Confer with other representative citizens and groups outside of state government who have knowledge, experience or contact with business and industry, in the field of education, labor or agriculture or are otherwise representative of a cross-section of the economy of our State.

The interim findings of the Tax Study Commission shall be reported to the Legislature at the regular session of the Legislature, one thousand nine hundred eighty-three, in respect to progress of activities, programs and plans of the commission toward the development of recommendations in establishing an equitable, improved and
sound tax structure for the State and geared to the new needs of the State in light of changed conditions of national energy shortage, the State's natural resources, its economy, its attraction and retention of manufacturing and other industry, its gainful employment of its citizens and its provisions for their health and welfare; and the final report of the commission shall be submitted to the Legislature at its regular session, one thousand nine hundred eighty-four, unless the existence of the Tax Study Commission is continued by resolution or other action of the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION 20
(By Mr. Otte and Mr. McKinley)

[Adopted March 13, 1982.]

Requesting and directing the Legislature and the State of Pennsylvania to perform their moral and legal obligation and complete the project known as PA-648.

WHEREAS, Water originating in Pennsylvania is flowing uncontrolled into West Virginia and flooding the City of Wheeling causing loss of life and destruction of property; and

WHEREAS, To help alleviate the flooding problem, Pennsylvania and West Virginia entered into the Wheeling Creek Watershed Protection and Flood Prevention District Compact in 1967; and

WHEREAS, Such dams were built in West Virginia, and Pennsylvania agreed to do the same in their state, but due to escalating costs, Pennsylvania has only partially fulfilled their commitment; and

WHEREAS, In the interest of preservation of life and property of West Virginia, the Wheeling Creek Watershed Commission has undertaken changes, compromises and developments to reduce the fiscal impacts of the dam to Pennsylvania and to improve the project generally; and

WHEREAS, Due to the aforementioned changes the proposed dam is now a dry dam with no permanent reservoir; and
WHEREAS, The Wheeling Creek Watershed Commission is committed to pay for the maintenance and operation of PA-648; and

WHEREAS, The Wheeling Creek Watershed Commission is undertaking a long-range study of the impacts of PA-648 in cooperation with Waynesburg College, the United States Geological Survey, the United States Environmental Protection Agency, the United States Soil Conservation Service, the Pennsylvania Game Commission and the Pennsylvania Fish Commission; and

WHEREAS, The Wheeling Creek Watershed Commission stands ready to assist in this project; therefore, be it

Resolved by the Legislature of West Virginia:

That the State of Pennsylvania perform its moral and legal obligations and take the necessary measures to prevent the flooding of Wheeling; and, be it

Further Resolved, That the Clerk of the House of Delegates be directed to furnish a copy of this resolution to the Honorable John D. Rockefeller IV, Governor; the Honorable A. James Manchin, Secretary of State; the Governor of Pennsylvania; the Pennsylvania Legislature; and the Wheeling Creek Watershed Commission.

HOUSE CONCURRENT RESOLUTION 22  
(By Miss Davis, et al)  
[Adopted March 9, 1982.]

Providing for the second session of the first West Virginia Silver Haired Legislature conducted by elected Delegates and Senators who are persons sixty years old or older to provide an opportunity for elder West Virginians to learn about the legislative process.

WHEREAS, The members of the West Virginia State Legislature have continually evidenced their special concern for issues affecting older West Virginians; and

WHEREAS, West Virginia's legislators seek input from the State's older citizens to aid them in making their legislative decisions; and
WHEREAS, The Silver Haired Legislature is an effective means for representing the needs of older West Virginians to West Virginia's legislators; and

WHEREAS, It is appropriate for the citizens of the State to understand the legislative process of the State Legislature; and

WHEREAS, The members of the 1981 Silver Haired Legislature were very impressed with the knowledge they gained about the legislative process; and

WHEREAS, The West Virginia Commission on Aging wishes to again sponsor such a session; therefore, be it

Resolved by the Legislature of West Virginia:

That the second session of the 65th West Virginia Senate and the second session of the 65th West Virginia House of Delegates grant permission for the Silver Haired Legislature to utilize the Senate and House of Delegates Chambers and appropriate hearing and meeting rooms for a Silver Haired Legislative Session for a period of three days: Provided, That no person who has publicly announced his candidacy for any elective office of this state or any political subdivision thereof or any member of the Legislature may serve as a member of the Silver Haired Legislature; and, be it

Further Resolved, That the office of the Clerk of the House of Delegates and the office of the Clerk of the Senate assist the Commission on Aging to effectuate the purposes of this resolution; and, be it

Further Resolved, That Legislative Services assist the Silver Haired Legislature to the maximum extent possible as determined by the Director of Legislative Services.

HOUSE JOINT RESOLUTION 5
(By Mr. Kopp)
[Adopted March 13, 1982]

Proposing an amendment to the Constitution of the State of West Virginia, repealing section three, article nine thereof, relating to removing the limitation on the number of consecutive terms for which a person may be eligible for the office of sheriff;
numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-two, which proposed amendment is that section three, article nine thereof be repealed.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as the “Sheriff’s Succession Amendment,” and the purpose of the proposed amendment is summarized as follows: “To repeal section three, article nine of the State Constitution which provided that a person who had been elected or who had served as sheriff for all or part of two consecutive terms was ineligible for the office of sheriff for the term following the second of the two consecutive terms.”

HOUSE JOINT RESOLUTION 14
(By Mr. Harman, 33rd Dist., and Mr. Blackwell)
[Adopted March 6, 1982.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section ten, article ten thereof, relating to reducing from sixty percent to a simple majority the number of votes required for approval of an excess levy for school purposes or the incurring of indebtedness and the issuance of bonds by a county board of education; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to
the Constitution of the State of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-two, which proposed amendment is that section ten, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§10. School levy and bond amendment.

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property for the support of public schools may be increased in any school district for a period not to exceed five years, and in an amount not to exceed one hundred percent of such maximum rates, if such increase is approved, in the manner provided by law, by at least a majority of the votes cast for and against the same.

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates provided for tax levies by school districts on the several classes of property may be used entirely for current expense purposes; and all levies required for principal and interest payments on any bonded indebtedness, now or hereafter contracted, not to exceed five percent on the value of the taxable property therein, the value to be ascertained in accordance with section eight of this article, shall be laid separate and apart and in addition to such maximum rates, but in the same proportions as such maximum rates are levied on the several classes of property.

Notwithstanding the provisions of section eight of this article relating to a vote of the people or any other provisions of this Constitution, a county board of education may contract indebtedness and issue bonds for public school purposes as provided by law, if, when submitted to a vote of the people of the county, in the manner provided by law, the question of contracting indebtedness and issuing bonds is approved by a majority of the votes cast for and against the same.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as the “Fair
Educational Opportunity Amendment," and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit county school levies, indebtedness and bonds to be approved by a simple majority of the votes cast for and against the same."

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SENATE CONCURRENT RESOLUTION 2
(By Mrs. Spears, Mr. Huffman and Mr. Holliday)

[Adopted March 8, 1982.]

Directing creation of a Task Force on Catastrophic Diseases.

WHEREAS, The people of West Virginia as people everywhere are subject to a multitude of diseases which, because of their severity, debilitation and extended duration are often catastrophic in their impact on the victims of the diseases and their families; and

WHEREAS, The expense of caring for and treating victims of these diseases can exhaust benefits available through health insurance and public reimbursement programs and can cause victims and their families to go into significant debt in order to obtain the necessary care and treatment; and

WHEREAS, Access to the services needed for the care and treatment of victims of these diseases may be restricted because of the high cost or because the services are inadequate and fragmented; and

WHEREAS, These severe, chronic and debilitating diseases often unnecessarily rob people of the capability to live productive and fulfilling lives in a manner commensurate with their skills and aspirations because of the high cost and lack of availability of services; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature create a twelve member Task Force on Catastrophic Diseases, consisting of five members of the House of Delegates, five members of the Senate, the Director of the Department of Health or his designee, and the Insurance Commissioner or his designee, which shall, in cooperation with the Joint
Committee on Government and Finance and its Subcommittee on Health and Social Services:

A. (1) Study those diseases that may have catastrophic impact on individuals and their families and the relationship between the care and treatment of individuals with these diseases and the availability, accessibility, cost quality and acceptability of the services currently available to the people of the State; and

(2) Consider alternative actions and their costs that may be taken by the State to better assure the availability of services needed for victims of these catastrophic diseases at reasonable cost and to assist individuals and families with the excessive costs involved in the care and treatment of these diseases; and

(3) Prepare a report for submission to the Joint Committee on Government and Finance, the Governor and the Legislature on or before January 1, 1983, recommending legislation and any appropriations necessary to assist individuals with these diseases.

B. The Joint Committee on Government and Finance may provide such funds as are reasonable and necessary to carry out the purposes of the Task Force.

SENATE CONCURRENT RESOLUTION 25
(Originating in the Senate Committee on the Judiciary)

[Adopted March 13, 1982]

Creating a special joint interim commission to conduct a comprehensive study of the recent Supreme Court decision \textit{Mandolidis v. Elkins Industries, Inc.} 246 S.E. 2d 907 (W.Va. 1978).

\textbf{WHEREAS}, It is the duty of the State to clearly define the rights and responsibilities of both employee and employer consistent with both job opportunities and safe working conditions within the State of West Virginia; and

\textbf{WHEREAS}, A concern has developed in this State relating to the recent Supreme Court decision of \textit{Mandolidis v. Elkins Industries, Inc.}, 246 S.E. 2d 907 (W.Va. 1978) and its impact on economic development, job opportunities and safe working conditions; therefore, be it
Resolved by the Legislature of West Virginia:

That a special interim commission be created to be known as the “Special Interim Commission on Mandolidis” to consist of the following members:

Five members of the Senate to be appointed by the President, and one designated by the President as cochairman with no more than three members of the same political party;

Five members of the House of Delegates appointed by the Speaker, one to serve as cochairman with no more than three members of the same political party;

The director of the Governor’s Office of Economic and Community development or his designee; and

Eight members of the public and residents of the State, four of whom shall represent the interest of industry and four of whom shall represent the interest of labor, four members to be appointed by the President of the Senate, and four members to be appointed by the Speaker of the House; and, be it

Further Resolved, That the said commission is hereby directed to review, examine and study the status and effectiveness of the laws relating to employers’ immunity from civil action for injuries arising in the course of and relating to employment, the needs for changes in the system, the ways and means to effect such changes and to make recommendations to the Legislature regarding the same; and, be it

Further Resolved, That the commission is authorized to meet at such times and in such places as the cochairman of the commission shall direct and that the commission is authorized to conduct meetings and hearings with such government officials and other parties as the commission shall deem necessary; and, be it

Further Resolved, That the commission report its findings and recommendations periodically to the Joint Committee on Government and Finance and that the commission shall complete its work and submit a complete report to the 1983 Regular Session of the West Virginia Legislature; and, be it

Further Resolved, That the expenses necessary to conduct the commission’s study and to prepare appropriate reports, recommenda-
tions and proposed legislation be paid from the legislative ap­
propriations to the Joint Committee on Government and Finance,
but that no such expenses be incurred by the commission unless
prior approval is obtained from the commission and from the Joint
Committee on Government and Finance; and, be it

Further Resolved, That private citizen members and legislative
members of the special interim commission on Mandolidis shall be
reimbursed for the necessary expenses incurred in the performance
of their duties, subject to the limitations governing the reimburse­
ment of expenses for members of the Legislature of West Virginia.
AN ACT to amend and reenact sections three, four, five, ten, eleven and twelve, article five-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dam control act; defining certain terms; describing the powers and duties of the director; providing for the establishment of fees for certificate of approval; making it unlawful to place, construct, enlarge, alter, repair, remove or abandon certain dams without applying for and obtaining a certificate of approval from the director; procedures for handling emergencies involving dams; requirements for dams completed prior to effective date of section; requirements for dams under construction prior to effective date of section.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, ten, eleven and twelve, article five-d, 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 5D. DAM CONTROL ACT.

§20-5D-3. Definition of terms used in article.
§20-5D-4. General powers and duties of director; maximum fee established for certificates of approval.
§20-5D-5. Unlawful to place, construct, enlarge, alter, repair, remove or
abandon dam without certificate of approval; application required to obtain certificate.

§20-5D-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.

§20-5D-11. Requirements for dams completed prior to effective date of this section.

§20-5D-12. Requirements for dams under construction prior to effective date of this section.

§20-5D-3. Definition of terms used in article.

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

2. (a) “Alterations” or “repairs” means only those changes in the structure or integrity of a dam which may affect its safety, which determination shall be made by the director.

3. (b) “Application for a certificate of approval” means the request in writing by a person to the director requesting that such person be issued a certificate of approval.

4. (c) “Appurtenant works” means any structure or facility which is an adjunct of, or connected, appended or annexed to a dam, including, but not limited to, spillways, a reservoir and its rim, low level outlet works, or water conduits such as tunnels, pipelines and penstocks either through the dam or its abutments.

5. (d) “Certificate of approval” means the approval in writing issued by the director to a person who has applied to the director for such certificate of approval which authorizes such person to place, construct, enlarge alter, repair or remove a dam and specifies the conditions or limitations under which such work is to be performed by such person.

6. (e) “Dam” means an artificial barrier or obstruction, including any works appurtenant to it and any reservoir created by it, which is or will be placed, constructed, enlarged, altered or repaired so that it does or will impound or divert water and (1) is or will be twenty-five feet or more in height from the natural bed of such stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifteen acre-feet or more of water or (2) is or will be six feet or more in height from the natural bed of such stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifty acre-feet or more of water: Provided, That the term “dam” shall not include (1) any dam owned by the federal government, (2) any dam for which the operation and maintenance thereof is the
responsibility of the federal government, (3) slack-water dams constructed and maintained in connection with public highways, streets, bridges, culverts or viaducts, which shall continue to be regulated and controlled as provided in article five of this chapter, or (4) farm ponds constructed and used primarily for agricultural purposes including, but not limited to, livestock watering, irrigation, retention of animal wastes, and fish culture, and which have no potential to cause loss of human life in the event of embankment failure.

(f) “Department” means the department of natural resources.

(g) “Director” means the director of the department of natural resources or his authorized agents.

(h) “Enlargement” means any change in or addition to an existing dam which (1) raises the height of the dam, (2) raises or may raise the water storage elevation of the water impounded by the dam, (3) increases or may increase the amount of water impounded by the dam, or (4) increases or may increase the watershed area from which water is impounded by the dam.

(i) “Person” means any public or private corporation, institution, association, society, firm, organization or company organized or existing under the laws of this or any other state or country; the state of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever. The term “person,” when used in this article, shall be understood to include and refer to any authorized agent, lessee or trustee of any of the foregoing or receiver or trustee appointed by any court for any of the foregoing.

(j) “Reservoir” means any basin which contains or will contain impounded water.

(k) “Water” means any liquid, including any solids or other matter which may be contained therein, which is or may be impounded by a dam.

(l) “Water storage elevation” means the maximum elevation that water can reach behind a dam without encroaching on the freeboard approved for the dam under flood conditions.
§20-5D-4. General powers and duties of director; maximum fee established for certificates of approval.

1 The director shall have the following powers and duties:
2 (a) To control and exercise regulatory jurisdiction over
dams as provided for in this article;
3 (b) To review all applications for a certificate of approval
for the placement, construction, enlargement, alteration,
repair or removal of any dam;
4 (c) To grant, modify, amend, revoke, restrict or refuse to
grant any certificate of approval based on a determination by
him that such action is proper or necessary to protect life and
property as provided in this article;
5 (d) To adopt, modify, repeal and enforce rules, and issue
orders, which he shall do in accordance with the provisions of
chapter twenty-nine-a of this code as if the provisions of said
chapter twenty-nine-a were set forth in extenso herein to
implement and make effective the powers and duties vested
in him by the provisions of this article;
6 (e) To take any lawful action he deems necessary for the
effective enforcement of the provisions of this article;
7 (f) To establish and charge reasonable fees not to exceed
twenty-five dollars for the review of applications for
certificates of approval and the issuance thereof;
8 (g) To employ qualified consultants or additional persons
in the department as necessary to review applications for
certificates of approval and to recommend whether they
should be approved, to inspect dams and to enforce the
provisions of this article;
9 (h) To cooperate and coordinate with agencies of the
federal government, this state and counties and
municipalities of this state to improve, secure, study and
enforce dam safety and dam technology within this state;
10 (i) To make any investigation or inspection necessary to
implement or enforce the provisions of this article and to
enter upon the public or private property of any dam owner
as may be necessary to make such investigations or
inspections. The director may make such investigations,
inspections or entries after notifying the dam owner or other
person in charge of such dam: Provided, That where the
owner or person in charge of the dam is not available, the
director may make such investigations, inspections or entries
as are necessary; and
11 (j) To prepare and publish within a reasonable time,
criteria to govern the design, construction, repair, inspection and maintenance of proposed dams herein defined, and to review these criteria annually in order to consider improved technology for inclusion in such criteria.

§20-5D-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.

On and after the effective date of this section, it shall be unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any dam under the jurisdiction of the department until he has first (a) filed an application for a certificate of approval with the department, and (b) obtained from the department a certificate of approval: Provided, That a person who has applied for and obtained a certificate of approval on or after the first day of July, one thousand nine hundred seventy-three, in accordance with the provisions of the prior enactment of this section, shall not be required to re-apply for a new certificate of approval for the plans and specifications which were approved by the original certificate: Provided, however, That a person making routine repairs on a dam which do not affect the safety of the dam shall not be required to submit such application or have such certificate. A separate application for a certificate of approval must be submitted by a person for each dam he desires to place, construct, enlarge, alter, repair, remove or abandon except that, under rules adopted by the director, one application may be valid for more than one dam involved in a single project or formation of a reservoir.

Each application for a certificate of approval shall be made in writing on a form prescribed by the director and shall be signed and verified by the applicant. The application shall contain and provide information which may be reasonably required by the director to administer the provisions of this article.

§20-5D-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.

The owner of a dam shall have primary responsibility for determining when an emergency involving his dam exists.
When the owner of a dam determines such emergency does exist, he shall notify the director and shall notify any persons who may be endangered if the dam should fail. The owner shall also immediately take any remedial action necessary to protect life and property.

The director shall, if he determines that an emergency exists involving a dam, notify any persons who may be endangered if the dam should fail and who have not been so notified and immediately take any remedial action necessary to protect life and property if in his judgment (a) the condition of the dam so endangers life and property that time is not sufficient to permit the issuance and enforcement of an order for the owner to correct the condition or (b) passing or imminent floods or other conditions threaten the safety of the dam. Remedial actions the director may take include, but are not limited to:

(1) Taking full charge and control of the dam.
(2) Lowering the level of water impounded by the dam by releasing such impounded water.
(3) Completely releasing all water impounded by the dam.
(4) Performing any necessary remedial or protective work at the site of the dam.
(5) Taking any other steps necessary in the opinion of the director to safeguard life and property.

Once the director has taken full charge of the dam, the director shall continue in full charge and control of such dam until, in the director's opinion, it has been rendered safe or the emergency occasioning the action has ceased and the owner is adjudged competent by the director to reassume control of such dam and its operation. The assumption by the director of the control of the dam will not relieve the owner of a dam of liability for any negligent acts the owner commits or which are committed by his agents.

In case of an emergency where the director declares that making repairs to the dam or breaching of the dam is immediately necessary to safeguard life and property, repairs or breaching shall be started immediately by the owner, or by the director at the owner's expense, if the owner fails to do so. The owner shall notify the director at once of any emergency repairs or breaching the owner proposes to undertake and of work he has under way to alleviate the emergency. The proposed repairs, breaching and work shall be made to conform to such orders as the director may issue. The director...
may obtain equipment and personnel for emergency work
from any person as is necessary and expedient to accomplish
the required work. Any person undertaking such work at the
request of the director shall come under the provisions of the
good samaritan law, section fifteen, article seven, chapter
fifty-five of this code: Provided, That a person undertaking
such work shall receive remuneration for his services from
the department of natural resources.

The costs reasonably incurred in any remedial action taken
by the director as provided in this article shall be paid for
initially by funds appropriated to the department of natural
resources for such purposes, and such sums so expended, if
not promptly repaid by the owner upon request of the
director, shall be recovered from the owner by appropriate
civil action to be initiated by the attorney general upon
request of the director.

§20-5D-11. Requirements for dams completed prior to effective
date of this section.

The director shall give notice to file an application for a
certificate of approval to every owner of a dam which was
completed prior to the effective date of this section: Provided,
That no such notice need be given to a person who has
applied for and obtained a certificate of approval on or after
the first day of July, one thousand nine hundred
seventy-three, in accordance with the provisions of the prior
enactment of section five of this article. Such notice shall be
given by certified or registered mail, return receipt requested,
to the owner at his last address of record in the office of the
county assessor of the county in which the dam is located and
such mailing shall constitute service. A separate application
for each dam a person owns shall be filed with the director in
writing upon forms supplied by him and shall include or be
accompanied by appropriate information concerning the dam
as the director requires.

The director shall make inspections of such dams or
reservoirs at state expense. The director shall require owners
of such dams to perform at their expense such work or tests
as may reasonably be required to disclose information
sufficient to enable the director to determine whether to issue
a certificate of approval or to issue an order directing further
work at the owner's expense necessary to safeguard life and property. For this purpose, the director may require an owner to lower the water level of, or to empty, water impounded by the dam adjudged by the director to be unsafe. If, upon inspection or upon completion to the satisfaction of the director of all work that he ordered, the director finds that the dam is safe to impound water, a certificate of approval shall be issued.

§20-5D-12. Requirements for dams under construction prior to effective date of this section.

Any dam which the director finds was under construction and based on his findings not fifty percent constructed on the effective date of this section shall, except as provided in the next succeeding paragraph, be subject to the same provisions of this article as a dam commenced after that date. Every owner of such a dam shall file an application with the director for the director's written approval of the plan and specifications of the dam: Provided, That if the person constructing such dam has applied for and obtained a certificate of approval on or after the first day of July, one thousand nine hundred seventy-three, in accordance with the provisions of the prior enactment of section five of this article, such person shall not be required to re-apply for a new certificate of approval for the plans and specifications which were approved by the original certificate.

Construction work on such a dam may proceed, provided an application for approval of the plans and specifications therefor is filed, until a certificate of approval is received by the owner from the director approving the dam or an order is received by the owner from the director specifying how the construction must be performed to render the dam safe. After receipt of an order specifying how construction of the dam must be performed, work thereafter must be in accordance with the order.

Dams which are determined by the director to be fifty percent or more constructed on the effective date of this section shall be subject to the same supervision as dams which were completed prior thereto.
AN ACT to amend and reenact section one, article six-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment security benefit program; and changing the formula by which such benefits are triggered.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


1 As used in this article, unless the context clearly requires otherwise:
2 (1) "Extended benefit period" means a period which:
3 (A) Begins with the third week after a week for which there is a state "on" indicator; and
4 (B) Ends with either of the following weeks, whichever occurs later:
5 (i) The third week after the first week for which there is a state "off" indicator; or
6 (ii) The thirteenth consecutive week of such period.
7 Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefit period may become effective in this state prior to the sixty-first day following the date of enactment of the Federal-State Extended Unemployment Compensation Act of 1970, and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and state "off" indicator, respectively.
8 (2) There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the
regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) Equaled or exceeded four percent.

(C) The determination of whether there has been a state “on” indicator beginning any extended benefit period shall be made hereunder as if subsection (2) did not contain paragraph (A) thereof, but only if the commissioner determines that the rate of insured unemployment (not seasonally adjusted) equals or exceeds five percent.

(3) After the twenty-fifth day of September, one thousand nine hundred eighty-two, there is a “state ‘on’ indicator” for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) Equaled or exceeded five percent.

(C) An extended benefit period shall be made hereunder as if subsection (3) did not contain paragraph (A) thereof, but only if the commissioner determines that the rate of insured unemployment (not seasonally adjusted) equals or exceeds six percent.

(4) There is a state “off” indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subsections (2) or (3) were not satisfied.

(5) “Rate of insured unemployment,” for purposes of subdivisions (2) and (3) of this section, means the percentage derived by dividing

(A) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent
thirteen-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor by
(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(7) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:
(A) Has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect to wages and/or employment which were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or
(B) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis
of which he could establish a new benefit year which would include such week; and

(C) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(10) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

(11) No individual shall be entitled to extended benefits during a period of unemployment if he was disqualified under the provisions of subdivision (1), (2) or (3) of section three, article six of this chapter, which disqualification shall not be terminated until such individual has returned to covered employment and has been employed in covered employment for at least thirty working days.

(12) (A) Notwithstanding any other provisions of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the commissioner finds that during such period:

(i) He failed to accept any offer of suitable work or failed to apply for any suitable work (as defined under subdivision (12) (C) of this section), to which he was referred by the commissioner; or

(ii) He failed to actively engage in seeking work as prescribed under subdivision (12) (E) of this section.

(B) Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision (12) (A) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(C) For purposes of this subdivision (12) (A) (i) of this
section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities: Provided, however, That the gross average weekly remuneration payable for the work must exceed the sum of:

(i) The individual's average weekly benefit amount (as determined under subdivision (12)(D) of this section) plus;
(ii) The amount, if any, of supplemental unemployment benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,
(iii) Pays wages equal to the higher of:
(I) The minimum wages provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or
(II) The state or local minimum wage;
(iv) Provided that no individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability as described above if:
(I) The position was not offered to such individual in writing and was not listed with the employment service; or
(II) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section five, article six of this chapter, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision (12)(C) of this section: or
(III) The individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section five, article six of this chapter, without regard to the definition specified by subdivision (12)(C) of this section.

(D) Notwithstanding the provisions of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under subdivision (12)(C)(iii)(I) of this section.
198 (E) For the purposes of subdivision (12) (A) (ii) of this section an individual shall be treated as actively engaged in seeking work during any week if:

201 (i) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

203 (ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.

205 (F) The employment service shall refer any claimant entitled to extended benefits under this article to any suitable work which meets the criteria prescribed in subdivision (12) (C) of this section.

209 (G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

219 (13) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(14) An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found that he has been paid wages by an employer who was subject to the provisions of this chapter during the base period of his current benefit year in an amount at least equal to forty times his benefit rate for total unemployment.
AN ACT to amend article eighteen-b, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating generally to the implementation of Enrolled Committee Substitute for Senate Bill 409, enacted by the Legislature during the regular session thereof in the year one thousand nine hundred eighty-two; permitting such provisions to be so implemented notwithstanding requirements for promulgation of legislative rules relating to the state mortgage and industrial development investment pool; permitting the promulgation of procedural, interpretive or legislative rules with respect thereto as emergency rules to be effective upon the filing thereof; removing the requirement of certain findings with respect to such rules; limiting or prohibiting certain actions for review of such rules in certain cases; and the contents of certain deeds, deeds of trust, mortgages and other documents used with respect to transactions arising pursuant to said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.

§31-18B-12. Rules of construction and interpretation for prompt implementation of this article.

1 It is the intent of the Legislature that the housing development fund shall proceed with the implementation of this article promptly upon the effective date of this article under the provisions of this section and of Enrolled Committee Substitute for Senate Bill No. 409, enacted at the regular session of the Legislature in the year one thousand nine hundred eighty-two.

2 Notwithstanding the provisions of sections seven and eight
of this article for the promulgation of legislative rules and
notwithstanding any contrary provisions of chapter
twenty-nine-a of this code:

(1) The housing development fund may promulgate
emergency rules pursuant to the provisions of section fifteen,
article three, chapter twenty-nine-a of this code to implement
this article. Any such emergency rule, whether procedural,
interpretive or legislative, shall be effective upon filing
thereof in the state register. No findings of circumstances to
justify such emergency rules shall be required; such
emergency rules shall be deemed to have been promulgated
to comply with a time limitation established by this code. No
action shall lie for de novo or other review of such rule to
contest or question the existence of circumstances justifying
the promulgation of an emergency rule nor to challenge the
validity of such rule because of its classification as an
emergency rule: Provided, That no such rule shall suspend
the provisions of section eight of this article.

(2) Any deed, deed of trust, mortgage or other instrument
or document utilized in connection with any transaction
arising under or affected by this article may contain
provisions related to any emergency rule promulgated under
this section and any extension or amendment thereof and
shall, to the extent the instrument or document so provides,
fully bind and be enforceable by the parties thereto as if such
rule had been properly made effective under law and whether
or not such rule thereafter expires or is revoked: Provided,
That no such provision or agreement under this subdivision
shall suspend the provisions of this article or exceed its
limitations.

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CHAPTER 4
(Com. Sub. for S. B. 1—By Mr. Boettner)

[Passed April 3, 1982; in effect ninety days from passage. Approved by the Governor.]
circuit judge with respect thereto; defining certain terms relative to the investigation of a police officer or fireman; requiring an interrogation of a police officer or fireman be conducted at a reasonable hour; stipulating that a police officer or fireman must be informed of the nature of any investigation against him; prohibiting the act of subjecting an officer or fireman under interrogation to offensive language; requiring all interrogations of police officers or firemen to be recorded; granting a police officer or fireman the right to counsel when upon filing formal written charges against him or when an interrogation may lead to punitive action; providing a hearing procedure for police officers or firemen if punitive action is recommended from an interrogation or investigation; requiring notification by the police department or fire department to the police officer or fireman that he is entitled to a hearing; granting the hearing board power of subpoena; granting police officers or firemen the right to refuse to disclose personal finances, exceptions thereto; granting any police officer or fireman adversely affected by any action as a result of a hearing the right to appeal said adverse action to the policemen's or firemen's civil service commission; and exempting suspension of police officers and firemen under the influence of alcohol or controlled substances or for apparent emotional or mental disturbances.

Be it enacted by the Legislature of West Virginia:

That chapter 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 fourteen-a, to read as follows:

ARTICLE 14A. MUNICIPAL POLICE OFFICERS AND FIREMEN; PROCEDURE FOR INVESTIGATION.

§8-14A-1. Definitions.

§8-14A-2. Investigation and interrogation of a police officer or fireman.


§8-14A-4. Right to refuse to disclose personal finances; exceptions.

§8-14A-5. Appeal.

§8-14A-1. Definitions.

1 Unless the context clearly indicates otherwise, as used in this article:

3 (1) "Police officer" or "fireman" means any police officer or fireman of a police or fire department employed by the city
or municipality but shall not include the highest ranking
officer of such police or fire department.

(2) "Under investigation" or "under interrogation" means
any situation in which any police officer or fireman becomes
the focus of inquiry regarding any matter which may result in
punitive action.

(3) "Punitive action" means any action which may lead to
dismissal, demotion, suspension, reduction in salary, written
reprimand or transfer for purposes of punishment.

(4) "Hearing board" means a board which is authorized by
the chief of police or chief of the fire department to hold a
hearing on a complaint against a law-enforcement officer or
fireman and which consists of three members, all to be
selected from law-enforcement officers or firemen within that
agency, or law-enforcement officers or firemen of another
agency with the approval of the chief of police or chief of the
fire department of the other agency and who have had no part
in the investigation or interrogation of the law-enforcement
officer or fireman under investigation. One of the members of
the board shall be appointed by the chief of police or chief of
the fire department, one shall be appointed by the police
officers or firemen of that agency, and these two members of
the board shall, by mutual agreement, appoint the third
member of the board: Provided, That should the first two
members of the board fail to agree upon the appointment of
the third member of the board within five days they shall
submit to the policemen's civil service commission or to the
firemen's civil service commission, as may be appropriate, or
if there be no civil service commission, to the chief judge of
the circuit court of the county, a list of four qualified
candidates from which list the commission or chief judge
shall appoint the third member of the board: Provided,
however, That in the event one or more members of the board
cannot be appointed as otherwise provided in this section,
then the chief judge shall appoint a sufficient number of the
citizens of the municipality as may be necessary to constitute
the board. At least one member of the hearing board shall be
of the same rank as the law-enforcement officer or fireman
against whom the complaint has been filed.

(5) "Hearing" means any meeting in the course of an
investigatory proceeding, other than an interrogation at
which no testimony is taken under oath, conducted by a
§8-14A-2. Investigation and interrogation of a police officer or fireman.

When any police officer or fireman is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing police or fire department, which could lead to punitive action, such interrogation shall be conducted under the following conditions:

1. The interrogation shall be conducted at a reasonable hour, preferably at a time when the police officer or fireman is on duty, or during his normal working hours, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the police officer or fireman being interrogated at any place other than his residence, such officer or fireman shall be compensated for such off-duty time in accordance with regular department procedure. If the interrogation of the police officer or fireman occurs during his regular duty hours, such officer or fireman shall not be released from employment for any work missed due to interrogation.

2. Any police officer or fireman under investigation shall be informed of the nature of the investigation prior to any interrogation. Such officer shall also be informed of the name, rank and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. No more than three interrogators at one time shall question the officer or fireman under investigation.

3. No police officer or fireman under interrogation shall be subjected to offensive language or threatened with punitive action. No promise of reward shall be made as an inducement to answering questions.

4. The complete interrogation of any police officer or fireman shall be recorded, either written, taped or transcribed. Upon request of the law-enforcement officer or fireman under investigation or his counsel, and upon advance payment of the reasonable cost thereof a copy of the record shall be made available to him not less than ten days prior to any hearing.

5. Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters
which are likely to result in punitive action against any police
officer or fireman, then that officer or fireman shall have the
right to be represented by counsel who may be present at all
times during such interrogation.

Nothing herein shall prohibit the immediate temporary
suspension, pending an investigation, from duty of any police
officer or fireman who reports for duty under the influence of
alcohol or controlled substances which would prevent the
officer or fireman from performing his duties as defined in
chapter sixty-a of this code, or under the influence of an
apparent mental or emotional disorder.

(a) If the investigation or interrogation of a police officer
or fireman results in the recommendation of some punitive
action, then, before taking such action the police or fire
department shall give notice to the police officer or fireman
that he is entitled to a hearing on the issues by a hearing
board. The notice shall state the time and place of the hearing
and the issues involved and be delivered to the police officer
or fireman no later than ten days prior to the hearing. An official
record, including testimony and exhibits, shall be kept of the
hearing.

(b) The hearing shall be conducted by the hearing board of
the police or fire department except that in the event the
recommended punitive action is discharge, suspension or
reduction in rank or pay, and such action has been taken the
hearing shall be pursuant to the provisions of article fourteen,
section twenty, and article fifteen, section twenty-five of this
chapter, if applicable. Both the police or fire department and
the police officer or fireman shall be given ample opportunity
to present evidence and argument with respect to the issues
involved.

(c) With respect to the subject of any investigation or
hearing conducted pursuant to this section, the hearing board
may subpoena witnesses and administer oaths or
affirmations and examine any individual under oath, and may
require and compel the production of records, books, papers,
contracts and other documents.

(d) Any decision, order or action taken as a result of the
hearing shall be in writing and shall be accompanied by
findings of fact. The findings shall consist of a concise
statement upon each issue in the case. A copy of the decision
or order and accompanying findings and conclusions, along
with written recommendations for action, shall be delivered
or mailed promptly to the police officer or fireman, or to his
attorney of record.

§8-14A-4. Right to refuse to disclose personal finances;
exceptions.
1 No police officer or fireman shall be required or requested
2 for purposes of job assignment or other personnel action to
disclose any item of his property, income, assets, source of
income, debts or personal or domestic expenditures unless
such information is obtained through proper legal procedures
or is necessary for the employing agency to ascertain the
desirability of assigning the police officer to a specialized unit
in which there is a strong possibility that bribes or other
improper inducements might be offered.

§8-14A-5. Appeal.
1 Any police officer or fireman adversely affected by any
decision, order or action taken as a result of a hearing as
herein provided shall have the right to appeal the same to the
policemen's or firemen's civil service commission, if
applicable, in the manner provided for in section nineteen,
article fourteen and section twenty-five, article fifteen of this
chapter, or if there be no civil service commission, to the
circuit court of the county wherein said police officer or
fireman resides.

CHAPTER 5
(S. B. 2—By Mr. McGraw, Mr. President)

[Passed April 3, 1982; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-b, article thirteen,
chapter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to exemption from
business and occupation tax for the value of electricity
generated and used or consumed in a business activity taxable
under section two-b.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

§11-13-2b. Manufacturing, compounding or preparing products; processing of food; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use; valuation of timber products.

Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit, or commercial use, either directly or through the activity of others in whole or in part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), except electric power produced by public utilities or others, the amount of the tax to be equal to the value of the article, substance, commodity or newspaper, manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of eighty-eight one-hundredths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state. The value of electricity generated by persons taxed under the provisions of this section, which electricity is directly used by such persons in the business of manufacturing and not sold or otherwise transferred or transmitted to others, shall be exempt from the imposition of any tax under this article. With respect to the manufacturing, compounding or preparing for sale of timber or timber products, the measure of this tax is the value of the entire timber product manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state but such value shall not include the value of any timber or timber products used as ingredients, components, or elements of such timber products. The dressing and processing of food by a person,
firm or corporation, which food is to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products on a wholesale basis shall be subject to the same tax as is imposed on the business of selling at wholesale as provided in section two-c.

It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within this state and partially manufactures, compounds or prepares such products outside of this state the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this state bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the articles.
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, 1982

HOUSE BILLS

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## Disposition of Bills

### Senate Bills

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- Definitions
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