

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1986

First Extraordinary Session, 1986

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FOREWORD

This volume contains the Acts of the Second Regular Session and First Extraordinary Session of the 67th Legislature, 1986.

Second Regular Session, 1986

The second regular session of the 67th Legislature convened on January 8, 1986. The constitutional sixty-day limit on the duration of the session was midnight March 8, 1986. However, the session was extended by concurrent action of the two houses (H. C. R. 38) for the purpose of consideration of specific matters enumerated within the resolution. The Legislature adjourned *sine die* on March 9, 1986.

Bills totaling 1,911 were introduced in the two houses during this session (1187 House and 724 Senate). The Legislature passed 199 bills, 114 House and 85 Senate. The Governor approved 173 bills and vetoed twenty-six. However, one bill disapproved was repassed, notwithstanding the Governor's objections (H. B. 1002), and H. B. 1082 the Budget Bill, and H. B. 2180 were amended, repassed by the Legislature and approved by the Governor, leaving a net total of twenty-three bills lost through veto.

Seventy-two concurrent resolutions were introduced during the session, 44 House and 28 Senate, of which six House and five Senate were adopted. Thirty-seven House Joint and 21 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted two Senate Joint Resolutions—S. J. R. 12, Repeal of Limitation on Sheriff's Succession Amendment, and S. J. R. 20, Highway Improvement Amendment. The House had 24 House Resolutions and the Senate had 26 Senate Resolutions, of which 11 House and 25 Senate were adopted.

The Senate failed to pass 54 House bills passed by the House and 74 Senate bills failed passage by the House. Three Senate bills died in conference.

First Extraordinary Session, 1986

The First Extraordinary Session of the Legislature convened on May 15, 1986, and met until May 22. On that date, an adjournment was taken until May 29. *Sine die* adjournment

occurred on May 30, 1986.

The Proclamation of the Governor convening the session contained twenty-four items of business for consideration. A Supplemental Proclamation was issued by the Governor on May 15 and contained five additional items for consideration.

A total of one hundred bills were introduced, fifty-five House bills and forty-five Senate bills, of which twenty-five bills passed, 14 House and 11 Senate.

Five bills were vetoed by the Governor: S. B. 3, S. B. 39, H. B. 142, H. B. 152 and H. B. 154. The Legislature repassed all five bills over the veto.

Seven concurrent resolutions were offered, four House and three Senate. Three House and three Senate concurrent resolutions were adopted. Two House and four Senate resolutions were introduced and 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.

DONALD L. KOPP
*Clerk of the House of Delegates
and Keeper of the Rolls.*

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Regular Session, 1986

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MEMBERS OF THE SENATE

REGULAR SESSION, 1986
FIRST EXTRAORDINARY SESSION, 1986

OFFICERS

President—Dan Tonkovich, Benwood
President Pro Tem—J. R. “Bob” Rogers, Madison
Clerk—Todd C. Willis, Logan
Sergeant at Arms—Estil Bevins, Williamson
Doorkeeper—Aubrey R. Grizzell, St. Albans

District	Name	Address
First.....	*John G. Chernenko (D).....	Wellsburg
	John M. Karras (R).....	Wheeling
Second.....	*Thomas E. Loehr (D).....	New Martinsville
	Dan Tonkovich (D).....	Benwood
Third.....	¹ Donna J. Boley (R).....	St. Marys
	*Keith Burdette (D).....	Parkersburg
Fourth.....	*Oshel B. Craig (D).....	Hurricane
	Mike Shaw (R).....	Pt. Pleasant
Fifth.....	Mack C. Jarrell (D).....	Ceredo
	² B. Ned Jones (D).....	Huntington
Sixth.....	*H. Truman Chafin (D).....	Williamson
	John Pat Fanning (D).....	Jaeger
Seventh.....	*J. R. “Bob” Rogers (D).....	Madison
	Earl Ray Tomblin (D).....	Chapmanville
Eighth.....	*John Si Boettner (D).....	Charleston
	Mario J. Palumbo (D).....	Charleston
Ninth.....	*Ted T. Stacy (D).....	Beckley
	Bruce O. Williams (D).....	Rock View
Tenth.....	*Frederick L. Parker (D).....	Greenville
	Tony E. Whitlow (D).....	Kellysville
Eleventh.....	Robert K. Holliday (D).....	Fayetteville
	*Ralph D. Williams (D).....	Rainelle
Twelfth.....	Jae Spears (D).....	Elkins
	*Larry A. Tucker (D).....	Summersville
Thirteenth.....	*Gino R. Colombo (D).....	Clarksburg
	William R. Sharpe, Jr. (D).....	Weston
Fourteenth.....	Stephen L. Cook (D).....	Morgantown
	³ Anthony Yanero (D).....	Fairmont
Fifteenth.....	Gerald W. Ash (D).....	Morgantown
	*C. N. Harman (R).....	Grafton
Sixteenth.....	*Sondra Moore Lucht (D).....	Martinsburg
	Vernon C. Whitacre (D).....	High View
Seventeenth.....	*Darrell E. Holmes (D).....	Charleston
	Tod J. Kaufman (D).....	Charleston

¹ Appointed a member of the Senate May 14, 1985, to fill the vacancy created by the resignation of the Honorable Sam White.

² Appointed a member of the Senate December 30, 1985, to fill the vacancy created by the resignation of the Honorable Robert Nelson.

³ Appointed a member of the Senate January 30, 1985, to fill the vacancy created by the resignation of the Honorable James L. Davis.

* Elected in 1982. All others elected in 1984.

(D) Democrats.....	30
(R) Republican.....	4
Total.....	34

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1986

FIRST EXTRAORDINARY SESSION, 1986

OFFICERS

Speaker—Joseph P. Albright, Parkersburg

Speaker Pro Tem—W. Marion Shiflet, Union

Clerk—Donald L. Kopp, Clarksburg

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

Doorkeeper—Dannie Wingo, Yukon

District	Name	Address
First.....	Sam Love, Jr. (D).....	Weirton
	Patricia Mastrantoni (D).....	Weirton
Second.....	Roy Givens (D).....	Wellsburg
	Bernard V. Kelly (D).....	Weirton
Third.....	Thais Blatnik (D).....	Wheeling
	David B. McKinley (R).....	Wheeling
	Paul J. Otte (R).....	Wheeling
Fourth.....	Larry Wiedebusch (D).....	Glen Dale
	Albert D. Yanni (D).....	Glen Dale
Fifth.....	Robert L. Jones (R).....	New Martinsville
Sixth.....	Larry D. Swann (R).....	West Union
Seventh.....	Gregory K. Smith (D).....	St. Marys
Eighth.....	Joseph P. Albright (D).....	Parkersburg
	Robert W. Burk, Jr. (R).....	Parkersburg
	George E. Farley (D).....	Parkersburg
	Gene A. Haynes (R).....	Parkersburg
	Sandy Rogers (R).....	Vienna
Ninth.....	Marjorie H. Burke (D).....	Sand Fork
	Robert H. Kidd (D).....	Sutton
Tenth.....	Bob Ashley (R).....	Spencer
Eleventh.....	Bill Carmichael (R).....	Ripley
Twelfth.....	James M. Casey (D).....	Pt. Pleasant
	Deborah F. Phillips (D).....	Hurricane
	John H. Reed, III (R).....	Hurricane
	Patricia Holmes White (D).....	Poca
Thirteenth.....	Robert "Chuck" Chambers (D).....	Huntington
	Sue A. Davis (D).....	Huntington
	Phyllis E. Given (D).....	Huntington
	Evelyn E. Richards (R).....	Huntington
	Jody G. Smirl (R).....	Huntington
	Jack R. Traylor, Sr. (R).....	Huntington
Fourteenth.....	Lucian Fry (D).....	Wayne
	Walter Rollins (D).....	Kenova
Fifteenth.....	Irvine "KO" Damorn (D).....	Lenore
	James B. Simpkins (D).....	Meador
Sixteenth.....	W. E. "Bill" Anderson (D).....	Logan
	Sammy D. Dalton (D).....	Harts
	² Charles Gilliam (D).....	Logan
	R. L. "Bob" McCormick (D).....	Logan
Seventeenth.....	Robert L. Mullett (D).....	Peytona
Eighteenth.....	Ernest C. Moore (D).....	Thorpe
	Rick Murensky (D).....	Welch
Nineteenth.....	Clayton W. Hale (D).....	Pineville
	Ray Woolsey (D).....	Pineville

¹ Appointed a member of the House of Delegates January 7, 1986, to fill the vacancy created by the resignation of the Honorable William P. A. Nicely.

² Appointed a member of the House of Delegates January 18, 1985, to fill the vacancy created by the resignation of the Honorable Joe C. Ferrell.

Twentieth.....	Gilbert E. Bailey (D).....	Princeton
	Richard D. Flanigan (D).....	Princeton
	James W. McNeely (D).....	Athens
	³ Howard L. Wellman (D).....	Bluefield
Twenty-first.....	W. Marion Shiflet (D).....	Union
Twenty-second.....	Paul R. Hutchinson, Jr., (D).....	Beckley
	Jack J. Roop (D).....	Beckley
	Arnold W. Ryan (D).....	Hinton
	Fred T. Stacy (D).....	Beckley
	William R. Wooton (D).....	Beckley
Twenty-third.....	Bonnie L. Brown (D).....	South Charleston
	Lee F. Feinberg (D).....	Charleston
	Barbara A. Hatfield (D).....	South Charleston
	⁴ John R. Hoblitzell (R).....	Charleston
	James F. Humphreys (D).....	Charleston
	Thomas A. Knight (D).....	Charleston
	Charlotte J. Pritt (D).....	Charleston
	F. Lyle Sattes (D).....	Charleston
	Rudy Seacrist (D).....	Charleston
	Walton S. Shepherd, III, (D).....	Sissonville
	Leonard I. Underwood (D).....	St. Albans
	John M. "Slim" Wells (R).....	Charleston
Twenty-fourth.....	Pat R. Hamilton (D).....	Oak Hill
	Tom Louisos (D).....	Oak Hill
	John Pino (D).....	Oak Hill
Twenty-fifth.....	Betty D. Crookshanks (D).....	Rupert
	Sarah Lee Neal (D).....	Rainelle
Twenty-sixth.....	Linda Nelson Garrett (D).....	Webster Springs
	Ralph H. Johnson (D).....	Richwood
Twenty-seventh.....	Charles F. Jordan, Jr., (D).....	Elkins
	Joe Martin (D).....	Elkins
Twenty-eighth.....	Charles R. Shaffer (R).....	Buckhannon
	Donald L. Stemple (R).....	Philippi
Twenty-ninth.....	Robert J. Conley (R).....	Weston
Thirtieth.....	Percy C. Ashcraft, II (D).....	Clarksburg
	Floyd Fullen (D).....	Bridgeport
	Joseph M. Minard (D).....	Clarksburg
	Kenneth H. Riffle (D).....	Clarksburg
Thirty-first.....	Paul E. Prunty (R).....	Fairmont
	Duane Southern (D).....	Fairmont
	Benjamin N. Springston (R).....	Fairmont
	Cody A. Starcher (D).....	Fairmont
Thirty-second.....	Shelby (Bosley) Leary (D).....	Blacksville
	Elizabeth M. Martin (D).....	Morgantown
	Florence L. Merow (D).....	Morgantown
	Larry E. Schifano (D).....	Morgantown
Thirty-third.....	Fred Peddicord, III (R).....	Kingwood
	Floyd R. Stiles (R).....	Kingwood
Thirty-fourth.....	Marc L. Harman (R).....	Petersburg
	Robert D. Harman (R).....	Keyser
Thirty-fifth.....	Thomas J. Hawse, III, (D).....	Moorefield
Thirty-sixth.....	Daniel L. Shanholtz (R).....	Springfield
Thirty-seventh.....	Patrick H. Murphy (D).....	Martinsburg
Thirty-eighth.....	Larry V. Fairecloth (R).....	Inwood
Thirty-ninth.....	John Overington (R).....	Martinsburg
Fortieth.....	William H. Martin (D).....	Charles Town

³ Appointed a member of the House of Delegates December 2, 1984, to fill the vacancy created by the death of the Honorable Donald F. Anello.

⁴ Appointed a member of the House of Delegates March 7, 1985, to fill the vacancy created by the resignation of the Honorable Charlotte Lane.

(D) Democrats.....	73
(R) Republican.....	27
Total.....	100

COMMITTEES OF THE SENATE

Regular Session, 1986

First Extraordinary Session, 1986

STANDING

Agriculture

Parker (Chairperson), Lucht (Vice Chairperson), Ash, Holliday, Sharpe, Spears, Whitacre, Whitlow and Shaw.

Banking and Insurance

Tucker (Chairperson), Rogers (Vice Chairperson), Chafin, Cook, Kaufman, Loehr, Palumbo, Tomblin, Whitacre, B. Williams, R. Williams, Karras and Shaw.

Confirmations

Kaufman (Chairperson), Tomblin (Vice Chairperson), Boettner, Burdette, Chafin, Parker, Tucker, Whitlow and Karras.

Education

R. Williams (Chairperson), Burdette (Vice Chairperson), Ash, Boettner, Colombo, Holliday, Palumbo, Parker, Sharpe, B. Williams, Yanero and Boley.

Energy, Industry and Mining

Tomblin (Chairperson), Fanning (Vice Chairperson), Burdette, Chernenko, Holmes, Jones, Rogers, Sharpe, Stacy, Tucker, R. Williams, Yanero and Karras.

Finance

Spears (Chairperson), Tomblin (Vice Chairperson), Boettner, Burdette, Chernenko, Colombo, Craigo, Fanning, Holmes, Loehr, Parker, Sharpe, Whitacre, B. Williams, R. Williams, Harman and Karras.

Government Organization

Whitlow (Chairperson), Stacy (Vice Chairperson), Burdette, Cook, Craigo, Jones, Loehr, Lucht, Palumbo, Spears, R. Williams and Harman.

Health and Human Resources

Ash (Chairperson), Holliday (Vice Chairperson), Craigo, Jarrell, Loehr, Sharpe, Spears, Stacy, B. Williams, R. Williams and Harman.

Interstate Cooperation

Sharpe (Chairperson), Palumbo (Vice Chairperson), Burdette, Colombo, Cook, Fanning and Shaw, (Mr. President, Mr. Tonkovich is ex officio nonvoting member).

Judiciary

Chafin (Chairperson), Tucker (Vice Chairperson), Ash, Cook, Holliday, Jarrell, Kaufman, Lucht, Jones, Palumbo, Rogers, Stacy, Whitlow, Yanero, Boley and Shaw.

Labor

Holmes (Chairperson), Colombo (Vice Chairperson), Fanning, Holliday, Jarrell, Rogers, Sharpe, Stacy and Karras.

Military

Jarrell (Chairperson), Chernenko (Vice Chairperson), Colombo, Lucht, Jones, Palumbo, Spears, Tucker and Boley.

Natural Resources

Whitacre (Chairperson), B. Williams (Vice Chairperson), Chernenko, Cook, Craigo, Holmes, Palumbo, Parker, Rogers, Tomblin, Tucker, Whitlow and Harman.

Transportation

Fanning (Chairperson), Craigo (Vice Chairperson), Chernenko, Jones, Parker, Rogers, Tomblin, Yanero and Boley.

Rules

Tonkovich (Chairperson), Boettner, Chafin, Rogers, Spears, Tomblin, Tucker, Whitlow, R. Williams and Shaw.

SENATE COMMITTEES

JOINT

Enrolled Bills

B. Williams (Chairperson), Holmes, Kaufman, Loehr and Karras.

Government and Finance

Tonkovich (CoChairperson), Boettner, Chafin, Sharpe, Spears, Harman and Karras.

Rules

Tonkovich (CoChairperson), Boettner and Harman.

Rule-Making Review

R. Williams (Chairperson), Boettner, Rogers, Tomblin, Harman and Shaw, (Mr. President, Mr. Tonkovich is ex officio nonvoting member).

**SELECT COMMITTEE ON
ECONOMIC DEVELOPMENT**

Boettner (Chairperson), Tomblin (Vice Chairperson), Ash, Chernenko, Fanning, Loehr, Palumbo, Spears, R. Williams and Karras.

COMMISSIONS

Pensions and Retirement

Parker (Chairperson), Whitacre and Harman.

Special Investigations

Tonkovich (CoChairperson), Boettner, Tucker, Karras and Shaw.

**COMMITTEES OF THE
HOUSE OF DELEGATES**

**Regular Session, 1986
First Extraordinary Session, 1986**

STANDING

Agriculture and Natural Resources

Neal (Chairman of Agriculture), Burke (Vice Chairman of Agriculture), Love (Chairman of Natural Resources), Roop (Vice Chairman of Natural Resources), Ashcraft, Bailey, Damron, Hawse, Johnson, Jordan, Louisos, McNeely, Mullett, Murphy, Phillips, Shiflet, Southern, Underwood, Woolsey, Overington, Peddicord, Prunty, Shaffer, Springston and Stiles.

Banking and Insurance

McCormick (Chairman of Banking), Hamilton (Vice Chairman of Banking), Riffle (Chairman of Insurance), Starcher (Vice Chairman of Insurance), Anderson, Brown, Flanigan, Fry, Hawse, Jordan, Mastrantoni, Murensky, Phillips, Pritt, Schifano, Shiflet, Southern, Stacy, White, Ashley, Carmichael, Conley, McKinley, Reed and Stemple.

Constitutional Revision

Humphreys (Chairman), J. Martin (Vice Chairman), Anderson, Casey, Feinberg, Fry, Fullen, Garrett, Hatfield, Hutchinson, Kelly, Kidd, E. Martin, W. Martin, Shepherd, Wiedebusch, Woolsey, Wooten, R. Burk, Carmichael, Otte, Overington, Prunty, Reed and Stemple.

Education

Sattes (Chairman), Murphy (Vice Chairman), Ashcraft, Bailey, Dalton, Givens, Hale, Kidd, W. Martin, McCormick, Merow, Mullett, Phillips, Pino, Ryan, Stacy, Wellman, Yanni, Conley, Hoblitzell, Jones, Otte, Overington, Prunty and Rogers.

Finance

Farley (Chairman), Murensky (Vice Chairman), Blatnik, Burke, Davis, Flanigan, Fry, Hutchinson, Jordan, E. Martin, Neal, Pritt, Riffle, Seacrist, Simpkins, Smith, Starcher, White, R. Burk, Faircloth, McKinley, Reed, Shanholtz, Stemple and Wells.

Government Organization

Knight (Chairman), Minard (Vice Chairman), Anderson, Gilliam, Given, Hatfield, Hawse, Johnson, Kelly, Louisos, Love, Merow, Rollins, Southern, Stacy, Underwood, Wellman, Woolsey, Ashley, Hoblitzell, Peddicord, Richards, Rogers, Stiles and Traylor.

Health and Welfare

Givens (Chairman), Flanigan (Vice Chairman), Blatnik, Dalton, Davis, Hamilton, Hatfield, Leary, Louisos, J. Martin, McCormick, Minard, Moore, Mullett, Roop, Seacrist, Shepherd, White, Ashley, Conley, R. Harman, Otte, Richards, Rogers and Traylor.

Industry and Labor

Moore (Chairman), Simpkins (Vice Chairman), Brown, Crookshanks, Fullen, Garrett, Given, Leary, Mastrantoni, McNeely, Murphy, Pino, Riffle, Stacy, Starcher, Underwood, Wellman, Yanni, R. Burk, Hoblitzell, Jones, McKinley, Peddicord, Prunty and Richards.

Interstate Cooperation

Schifano (Chairman), Given (Vice Chairman), Love, Neal, Yanni, Otte and Rogers, (Mr. Speaker, Mr. Albright is ex officio nonvoting member).

Judiciary

Chambers (Chairman), Damron (Vice Chairman), Brown, Casey, Crookshanks, Feinberg, Fullen, Garrett, Hamilton, Humphreys, Leary, J. Martin, Mastrantoni, McNeely, Moore, Roop, Schifano, Shepherd, Carmichael, M. Harman, R. Harman, Haynes, Shaffer, Smirl and Springston.

Political Subdivisions

Davis (Chairman), Seacrist (Vice Chairman), Casey, Feinberg, Gilliam, Garrett, Hale, Humphreys, Kelly, Kidd, E. Martin, W. Martin, Merow, Minard, Murensky, Pritt, Rollins, Ryan, M. Harman, R. Harman, Haynes, Otte, Richards, Shanholtz and Smirl.

Roads and Transportation

Yanni (Chairman), Blatnik (Vice Chairman), Ashcraft, Bailey, Burke, Crookshanks, Dalton, Damron, Feinberg, Gilliam, Given, Hale, Hawse, Johnson, Merow, Pino, Ryan, Underwood, Conley, Haynes, Jones, Shanholtz, Smirl, Stiles and Traylor.

Rules

Albright (Chairman), Chambers, Farley, McCormick, Neal, Sattes, Shiflet, Wiedebusch, Wooton, Faircloth, Swann and Wells.

JOINT**Enrolled Bills**

Fullen (Chairman), Kelly (Vice Chairman), Kidd, Ashley and Stiles.

Government and Finance

Albright (Cochairman), Chambers, Farley, Sattes, Wooton, Carmichael and Swann.

Rule-Making Review

Casey (Chairman), Knight, Schifano, Wiedebusch, Shaffer and Springston (Mr. Speaker, Mr. Albright is ex officio nonvoting member).

Rules

Albright (Cochairman), Wooton and Swann.

SELECT COMMITTEE ON ECONOMIC POLICY

Casey (Chairman), Rollins (Vice Chairman), Chambers, Farley, Hamilton, Leary, Knight, Sattes, Shiflet, R. Harman, Shaffer and Springston.

COMMISSIONS**Pensions and Retirement**

Murensky (Chairman), Starcher and Swann.

Special Investigations

Albright (Cochairman), Sattes, Wooton, Faircloth and Hoblitzell.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 1986

CHAPTER 1

(S. B. 283—By Senators Whitacre, Parker, Lucht, Whitlow, Spears, Ash, Holliday, Sharpe and Shaw)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seventeen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing specifications for building legal fences with high tensile galvanized wire.

Be it enacted by the Legislature of West Virginia:

That section one, article seventeen, 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 17. FENCES.

§19-17-1. Definition of lawful fence.

- 1 Every fence of the height and description hereinafter
- 2 mentioned shall be deemed a lawful fence as to any horses,
- 3 mules, asses, jennets, cattle, sheep, swine, or goats, which
- 4 could not creep through the same, that is to say:
- 5 (a) If built of common rails, known as the worm fence,
- 6 four and one-half feet high;
- 7 (b) If built with posts and rails, or posts and plank, or
- 8 pickets, four feet high;
- 9 (c) If built with stone, two feet wide at base, and three
- 10 and one-half feet high;

11 (d) If a hedge fence, four feet high. If any hedge fence be
12 built upon a mound, the same from the bottom of the ditch
13 shall be included in estimating the height of such fence;

14 (e) If built with posts and wire, or pickets and wire, four
15 feet high, and shall consist of not less than six strands, the
16 first strand five inches, the second strand ten inches, the
17 third strand seventeen inches, the fourth strand twenty-five
18 inches, the fifth strand thirty-six inches, and the sixth
19 strand forty-eight inches from the ground; and if with more
20 than six strands, the space between the strands shall in no
21 case be greater than hereinbefore provided. The space
22 between the posts shall, in no case, be greater than sixteen
23 feet;

24 (f) If built with posts and high tensile galvanized wire,
25 forty-six inches high, and shall consist of not less than eight
26 strands, the first strand four inches, the second strand nine
27 inches, the third strand fourteen inches, the fourth strand
28 nineteen inches, the fifth strand twenty-five inches, the
29 sixth strand thirty-one inches, the seventh strand thirty-
30 eight inches, and the eighth strand forty-six inches from the
31 ground. The wire shall be maintained at no less than a two
32 hundred pound tension at all times. The space between
33 posts shall, in no case, be greater than thirty feet, provided
34 that pressure-treated one and one-fourth inch by one and
35 one-half inch by forty-eight inch slotted hardwood or one
36 and one-half inch by two inch by forty-eight inch softwood
37 battens are used between posts at a distance no greater than
38 ten feet; and

39 (g) If built with posts and high tensile galvanized wire
40 and electrified, thirty-eight inches high and shall consist of
41 not less than five strands, the first strand five inches, the
42 second strand ten inches, the third strand seventeen inches,
43 the fourth strand twenty-seven inches, and the fifth strand
44 thirty-eight inches from the ground. The wire shall be
45 maintained at no less than a two-hundred pound tension at
46 all times. The space between posts shall, in no case, be
47 greater than one hundred fifty feet, provided that pressure-
48 treated one and one-fourth inch by one and one-half inch
49 slotted hardwood or one and one-half inch by two inch
50 softwood battens are used between posts at a distance no
51 greater than thirty-five feet: *Provided*, That if said fence is
52 constructed to confine only horses, mules, asses, jennets, or

53 cattle, it shall be deemed a legal fence if it is not less than
54 three strands, the first strand seventeen inches, the second
55 strand twenty-seven inches and the third strand thirty-
56 eight inches from the ground. The space between posts
57 shall, in no case, be greater than one hundred fifty feet,
58 provided that pressure-treated one and one-fourth inch by
59 one and one-half inch slotted hardwood or one and one-half
60 inch by two inch softwood battens are used between posts at
61 a distance no greater than thirty-five feet. Only high-
62 powered low impedance fence controllers which comply
63 with international safety standards shall be used to
64 electrify fence.

65 All fences heretofore built under the existing law and in
66 compliance therewith shall be and remain and may be kept
67 up as lawful fences.

CHAPTER 2

(Com. Sub. for H. B. 1066—By Delegate McKinley)

[Passed February 13, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen, fifteen, sixteen, seventeen and eighteen, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to dogs killing, wounding or worrying livestock or poultry; adding show or breeding rabbits, horses and colts to the list of protected livestock or poultry; recovery of damages; assessment of damages; criminal penalties for harboring dog; and providing procedure and conditions under which owner of dog has duty to kill dog.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, fifteen, sixteen, seventeen and eighteen, article twenty, chapter nineteen 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. DOGS.

§19-20-14. Dog killing, wounding or worrying livestock or poultry—Recovery of damages.

§19-20-15. Same—Assessment of damages; appraisers.

§19-20-16. Same—When lawful to kill dog.

§19-20-14. Dog killing, wounding or worrying livestock or poultry—Recovery of damages.

1 If any dog has killed or assisted in killing, wounding
2 or worrying any sheep, lambs, goats, kids, calves, cattle,
3 swine, show or breeding rabbits, horses, colts, or poultry
4 out of the enclosure of the owner of the dog, the owner
5 or keeper of the dog shall be liable for the sheep, lambs,
6 goats, kids, calves, cattle, swine, show or breeding
7 rabbits, horses, colts, or poultry in the amount of the
8 damages sustained, to be recovered in an action before
9 any court or magistrate having jurisdiction of the action.
10 It shall not be necessary to sustain the action to prove
11 that the owner of the dog knew the dog was accustomed
12 to worrying, killing or wounding. A recovery under this
13 section shall bar and preclude the owner of the sheep,
14 lambs, goats, kids, calves, cattle, swine, show or
15 breeding rabbits, horses, colts, or poultry from obtain-
16 ing compensation from the county commission under the
17 provisions of this article. If the person suffering the loss
18 or damage cannot ascertain the owner or keeper of the
19 dog, or if the owner or keeper is not financially
20 responsible, then the person suffering the loss or
21 damage may file his claim with and prove the same
22 before the county commission of the county in which the
23 loss or damage is sustained, in the manner provided in
24 this article, and the commission shall pay the loss or
25 damage out of the fund provided for such purposes and
26 according to the provisions of this article. When
27 compensation is so obtained from the county commis-
28 sion, the county commission is authorized to sue under
29 this section and recover as the owner of the sheep,
30 lambs, goats, kids, calves, cattle, swine, show or
31 breeding rabbits, horses, colts, or poultry. The amount
32 so recovered shall be paid into the county treasury; but
33 no suit shall be commenced unless authorized by the
34 county commission.

§19-20-15. Same—Assessment of damages; appraisers.

1 Authority is hereby given to magistrates and notaries
2 public within this state, and within their respective
3 jurisdictions, to summon three substantial, upright and
4 worthy bona fide residents, citizens and taxpayers of his
5 county to assess the damages suffered by any person on
6 account of the destruction, loss or injury of any sheep,
7 lambs, goats, kids, calves, cattle, swine, show or
8 breeding rabbits, horses, colts, or poultry by dogs within
9 the county. The appraisers shall be appointed upon the
10 request of a person suffering damages on account of
11 such destruction, loss or injury. The appraisers shall go
12 upon the ground and investigate fully the extent of the
13 destruction, loss or injury, taking all the evidence
14 deemed necessary to arrive at the facts to be passed
15 upon in arriving at the amount of damage, if any,
16 suffered by the party making the complaint. Before the
17 appraisers may be summoned by the magistrate or
18 notary public, the complainant shall be required to
19 make a sworn complaint before the magistrate or notary
20 public, setting out in plain, easily comprehensible terms
21 the facts concerning his damages to the best of his
22 knowledge. After making a full investigation of the facts
23 involved, the appraisers, with the assistance of the
24 magistrate or notary public, shall make a sworn
25 statement and report the facts ascertained and the
26 damages suffered. The report and statement shall be
27 filed with the county commission or the clerk thereof in
28 vacation. The fees and mileage for services allowed in
29 such cases shall be the same as are allowed magistrates,
30 witnesses and arbitrators in magistrates' courts in this
31 state for similar services. In the event that the appraisers
32 find that the complainant has suffered no damage,
33 then the complainant shall be responsible for and pay
34 all the costs and expenses of the proceeding. In the event
35 that the complainant has suffered damages on account
36 of the destruction, loss or injury of his domestic animals,
37 according to the finding of the appraisers, the owner,
38 keeper or person permitting the dog, or dogs, causing
39 the damage to remain upon the premises under his
40 control shall be liable for all damages sustained by the
41 complainant, including all costs and necessary expenses.

42 All of the damages shall be collectible by an action at
43 law before any court or magistrate having jurisdiction
44 of the matter. All papers in connection with any claim
45 shall be filed and preserved in the office of the clerk of
46 the county commission.

§19-20-16. Same—When lawful to kill dog.

1 A person may kill a dog that he may see chasing,
2 worrying, wounding or killing any sheep, lambs, goats,
3 kids, calves, cattle, swine, show or breeding rabbits,
4 horses, colts, or poultry outside of the enclosure of the
5 owner of the dog, unless the chasing or worrying be done
6 by the direction of the owner of the sheep, lambs, goats,
7 kids, calves, cattle, swine, show or breeding rabbits,
8 horses, colts, or poultry.

§19-20-17. Same—Unlawful to harbor dog; penalty.

1 A person who shall harbor or secrete or aid in
2 secreting a dog which he knows or has reasons to believe
3 has worried, chased or killed any sheep, lambs, goats,
4 kids, calves, cattle, swine, show or breeding rabbits,
5 horses, colts, or poultry not the property of the owner
6 of the dog, out of his enclosure, or knowingly permits
7 the same to be done on any premises under his control,
8 is guilty of a misdemeanor, and, upon conviction thereof,
9 before any court or magistrate having jurisdiction
10 thereof in the county in which the offense is committed,
11 shall be fined not less than ten dollars nor more than
12 fifty dollars, and, at the discretion of the court or
13 magistrate, imprisoned in the county jail not more than
14 thirty days. Each day that the dog is harbored, kept or
15 secreted shall constitute a separate offense.

**§19-20-18. Same—Duty of owner to kill dog; proceeding
before magistrate on failure of owner to kill.**

1 The owner or keeper of a dog that has been worrying,
2 wounding, chasing or killing any sheep, lambs, goats,
3 kids, calves, cattle, swine, show or breeding rabbits,
4 horses, colts, or poultry not the property of the owner
5 or keeper, out of his enclosure, shall, within forty-eight
6 hours, after having received notice thereof in writing

7 from a reliable and trustworthy source, under oath, kill
8 the dog or direct that the dog be killed. If the owner
9 or keeper refuses to kill the dog as hereinbefore
10 provided, the magistrate, upon information, shall
11 summon the owner or keeper of the dog, and, after
12 receiving satisfactory proof that this dog did the
13 mischief, shall issue a warrant on application being
14 made by the owner of the sheep, lambs, goats, kids,
15 calves, cattle, swine, show or breeding rabbits, horses,
16 or colts, or poultry killed; and give it into the hands of
17 the sheriff, who shall kill the dog forthwith or dispose
18 of by other available methods. The cost of the proceed-
19 ings shall be paid by the owner or keeper of the dog so
20 killed, including a fee of fifty cents to the officer killing
21 the dog. The owner or keeper of the dog so killed shall,
22 in addition to the costs, be liable to the owner of the
23 sheep, lambs, goats, kids, calves, cattle, swine, show or
24 breeding rabbits, horses, colts, or poultry or to the
25 county commission for the value of the sheep, lambs,
26 goats, kids, calves, cattle, swine, show or breeding
27 rabbits, horses, colts, or poultry so killed or injured.

CHAPTER 3

(Com. Sub. for H. B. 1034—By Delegate Love)

[Passed February 17, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a, relating to the power to issue citations; dog wardens and deputy dog wardens.

Be it enacted by the Legislature of West Virginia:

That article twenty, 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 nineteen-a, to read as follows:

ARTICLE 20. DOGS.

§19-20-19a. Dog warden and deputy dog wardens; power to issue citations.

- 1 The county commission may, at its discretion, em-
- 2 power county dog wardens and deputy dog wardens to
- 3 issue citations for violation of provisions of this article.

CHAPTER 4

(H. B. 1117—By Delegate Shiflet and Delegate M. Harman)

[Passed March 7, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limiting liability of landowners and limiting duty of landowner with respect to ponds and sediment control structures designated for wildlife propagation purposes; providing for the designation of certain ponds and sediment control structures for wildlife propagation purposes.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article twenty-five, 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 25. LIMITING LIABILITY OF LANDOWNERS.

- §19-25-1. Purpose.
- §19-25-2. Limiting duty of landowner generally.
- §19-25-3. Limiting duty of landowner who leases land to state, counties, municipalities or agencies.
- §19-25-4. Application of article.
- §19-25-5. Definitions.

§19-25-1. Purpose.

- 1 The purpose of this article is to encourage owners of
- 2 land to make available to the public land and water
- 3 areas for recreational or wildlife propagation purposes
- 4 by limiting their liability toward persons entering

5 thereon and toward persons who may be injured or
6 otherwise damaged by the acts or omissions of persons
7 entering thereon.

§19-25-2. Limiting duty of landowner generally.

1 Subject to the provisions of section four of this article,
2 an owner of land owes no duty of care to keep the
3 premises safe for entry or use by others for recreational
4 or wildlife propagation purposes, or to give any warning
5 of a dangerous or hazardous condition, use, structure or
6 activity on such premises to persons entering for such
7 purposes.

8 Subject to the provisions of section four of this article,
9 an owner of land who either directly or indirectly invites
10 or permits without charge any person to use such
11 property for recreational or wildlife propagation
12 purposes does not thereby (a) extend any assurance that
13 the premises are safe for any purpose, or (b) confer upon
14 such persons the legal status of an invitee or licensee to
15 whom a duty of care is owed, or (c) assume responsibility
16 for or incur liability for any injury to person or property
17 caused by an act or omission of such persons.

§19-25-3. Limiting duty of landowner who leases land to state, counties, municipalities or agencies.

1 Unless otherwise agreed in writing, an owner of land
2 leased to the state or any agency thereof, or any county
3 or municipality or agency thereof, for recreational or
4 wildlife propagation purposes owes no duty of care to
5 keep that land safe for entry or use by others or to give
6 warning to persons entering or going upon such land of
7 any dangerous or hazardous conditions, uses, structures
8 or activities thereon. An owner who leases land to the
9 state or any agency thereof, or any county or municipi-
10 pality or agency thereof, for recreational or wildlife
11 propagation purposes shall not by giving such lease (a)
12 extend any assurance to any person using the land that
13 the premises are safe for any purpose, or (b) confer upon
14 such persons the legal status of an invitee or licensee to
15 whom a duty of care is owed, or (c) assume responsibility
16 for or incur liability for any injury to person or property
17 caused by an act or omission of a person who enters upon

18 the leased land. The provisions of this section apply
19 whether the person entering upon the leased land is an
20 invitee, licensee, trespasser or otherwise.

§19-25-4. Application of article.

1 Nothing herein limits in any way any liability which
2 otherwise exists (a) for willful or malicious failure to
3 guard or warn against a dangerous or hazardous
4 condition, use, structure or activity, or (b) for injury
5 suffered in any case where the owner of land charges
6 the person or persons who enter or go on the land other
7 than the amount, if any, paid to the owner of the land
8 by the state or any agency thereof, or any county or
9 municipality or agency thereof.

10 Nothing herein creates a duty of care or ground of
11 liability for injury to person or property.

12 Nothing herein limits in any way the obligation of a
13 person entering upon or using the land of another for
14 recreational or wildlife propagation purposes to exercise
15 due care in his use of such land and in his activities
16 thereon.

§19-25-5. Definitions.

1 For purposes of this article: (a) The term "land" shall
2 include, but not be limited to, roads, water, water-
3 courses, private ways and buildings, structures and
4 machinery or equipment thereon when attached to the
5 realty; (b) the term "owner" shall include, but not be
6 limited to, tenant, lessee, occupant or person in control
7 of the premises; (c) the term "recreational purposes"
8 shall include, but not be limited to, any one or any
9 combination of the following: Hunting, fishing, swim-
10 ming, boating, camping, picnicking, hiking, pleasure
11 driving, nature study, water skiing, winter sports and
12 visiting, viewing or enjoying historical, archaeological,
13 scenic or scientific sites, or otherwise using land for
14 purposes of the user; (d) the term "wildlife propagation
15 purposes" shall apply to and include all ponds, sediment
16 control structures, permanent water impoundments, or
17 any other similar or like structure created or con-
18 structed as a result of or in connection with surface

19 mining activities, as governed by article six, chapter
20 twenty of this code, or from the use of surface in the
21 conduct of underground coal mining as governed by
22 articles one and two, chapter twenty-two of this code,
23 and regulations promulgated thereunder, which ponds,
24 structures or impoundments are hereafter designated
25 and certified in writing by the director of the depart-
26 ment of natural resources and the owner to be necessary
27 and vital to the growth and propagation of wildlife,
28 animals, birds and fish or other forms of aquatic life,
29 and finds and determines that such premises has the
30 potential of being actually used by such wildlife for such
31 purposes and that such premises are no longer used or
32 necessary for mining reclamation purposes. Such
33 certification shall be in form satisfactory to the director
34 and shall provide that such designated ponds, structures
35 or impoundments shall not be removed without the joint
36 consent of the director and the owner; and (e) the term
37 "charge" shall mean the amount of money asked in
38 return for an invitation to enter or go upon the land.

CHAPTER 5

(H. B. 1772—By Delegate Brown and Delegate Chambers)

[Passed March 6, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of health and providing programs of treatment for youths with drug and alcohol problems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. DEPARTMENT OF HEALTH.

§27-1A-11. Division on alcoholism and drug abuse; powers and duties; definitions.

1 (a) The division on alcoholism, heretofore established
2 in the department of health, shall continue and be
3 known as the division on alcoholism and drug abuse.

4 (1) The supervisor and personnel of this division shall
5 assist the director of the department of health in the
6 establishment of a program for the care, treatment and
7 rehabilitation of alcoholics and drug abusers; for
8 research into the causes, prevention and treatment of
9 alcoholism and drug abuse; for the training of personnel
10 to provide the requisite rehabilitation of alcoholics and
11 drug abusers; and for the education of the public
12 concerning alcoholism and drug abuse.

13 (2) The department's program for the care, treatment
14 and rehabilitation of alcoholics and drug abusers may
15 include, when intended for such purposes, the establish-
16 ment of special clinics or wards within, attached to, or
17 upon the grounds of one or more of the state hospitals
18 under the control of the department of health; the
19 acquisition in the name of the department of real and
20 personal property and the construction of buildings and
21 other facilities; the leasing of suitable clinics, hospitals
22 or other facilities; and the utilization, through contracts
23 or otherwise, of the available services and assistance of
24 any professional or nonprofessional persons, groups,
25 organizations or institutions in the development,
26 promotion and conduct of the department's program.

27 (3) Neither the department of health nor the division
28 on alcoholism and drug abuse shall be required to accept
29 any alcoholic or drug abuser voluntarily seeking
30 hospitalization for clinical or hospital care, treatment or
31 rehabilitation; but the department may accept, pursuant
32 to its adopted and promulgated rules and regulations,
33 responsibility for clinical or hospital care, treatment or
34 rehabilitation of any alcoholic or drug abuser through
35 arrangements made voluntarily with the department by
36 him or some person acting in his behalf: *Provided*, That
37 any such person accepted by the department on a
38 voluntary basis shall be charged a minimum fee unless,
39 he shows, to the satisfaction of the department, that he
40 is unable to pay the fee: *Provided, however*, That the
41 department shall accept all alcoholics and drug abusers

42 committed by a mental hygiene commissioner or judicial
43 officer in accordance with the procedures established by
44 article six-a of this chapter: *Provided further*, That
45 notwithstanding any provision in article five of this
46 chapter which may be to the contrary, the supervisor of
47 the division on alcoholism and drug abuse may specify
48 the clinic or hospital to which the alcoholic or drug
49 abuser shall be committed after a final commitment
50 hearing provided in section four, article five of this
51 chapter.

52 (4) The department's program of research into the
53 causes, prevention and treatment of alcoholism and drug
54 abuse may include the utilization, through contracts or
55 otherwise, of the available services and assistance of any
56 private and public professional or nonprofessional
57 persons, groups, organizations or institutions, as well as
58 cooperation with private and public agencies engaged in
59 research in alcoholism or drug abuse or rehabilitation
60 of alcoholics or drug abusers.

61 (5) (A) The department's programs shall also provide
62 for the training of personnel to work with alcoholics and
63 drug abusers and the informing of the public as well as
64 interested groups and persons concerning alcoholism
65 and drug abuse and the prevention and treatment
66 thereof.

67 (B) The department shall train counselors who shall
68 be responsible for working with youth and developing
69 community programs for youth with drug and alcohol
70 problems. Personnel shall be available to work with
71 these youth in their community and school settings.

72 (C) The department shall provide at least two compre-
73 hensive outpatient programs for youth whose drug or
74 alcohol problems make them a candidate for such
75 programs as determined by qualified mental health
76 professionals. At least one program shall serve a rural
77 area. These programs shall include, at minimum:
78 Educational lectures; co-dependency, peer group,
79 individual and family counseling; services for at risk
80 population; and relapse, prevention and after care
81 programs. One such program shall be established by the

82 first day of January, one thousand nine hundred eighty-
83 seven, and a second program by the first day of July,
84 one thousand nine hundred eighty-seven.

85 (6) The department may employ such medical, psychi-
86 atric, psychological, secretarial and other assistance as
87 may be necessary to carry out the provisions of this
88 section.

89 (b) As used in this chapter or in section ten, article
90 one, chapter sixteen of the code:

91 (1) "Alcoholic" means a person who suffers from
92 alcoholism as defined in subdivision (2) of this
93 subsection.

94 (2) "Alcoholism" means a disease or illness character-
95 ized by psychological or physiological addiction to
96 alcoholic beverages as manifested by: (A) The inability
97 to control one's consumption of alcoholic beverages
98 except through total abstinence, or (B) the inability to
99 control one's behavior when consuming alcoholic bever-
100 ages, or (C) both.

101 (3) "Alcohol abuser" means a person whose use of
102 alcohol has produced any of the effects described in
103 subdivision (4) of this subsection.

104 (4) "Alcohol abuse" means the periodic, frequent or
105 constant consumption of alcoholic beverages to the
106 extent that one's health is substantially impaired or
107 endangered or one's social or economic functioning is
108 substantially disrupted.

109 (5) "Drug abuser" means a person who is in a state
110 of psychic or physical dependence, or both, arising from
111 the administration of any controlled substance, as that
112 term is defined in chapter sixty-a of this code, on a
113 continuous basis.

114 (6) "Drug abuse" means the use of any controlled
115 substance as that term is defined in said chapter sixty-
116 a, until such time as the user has become dependent
117 upon or addicted to the same.

CHAPTER 6

(Com. Sub. for S. B. 339—By Mr. Tonkovich, Mr. President and Senator Harman)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections one and five, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three of said chapter; to further amend said article three by adding thereto a new section, designated section twenty-two-a; to amend and reenact section fifteen, article four of said chapter; to amend and reenact section twelve, article seven of said chapter; to further amend said article seven by adding thereto a new section, designated section twelve-a; to amend and reenact sections two, three, twenty, twenty-three, twenty-nine and thirty-four, article eight of said chapter; and to further amend said article eight by adding thereto a new section, designated section twenty-a, all relating to the regulation and control of alcoholic liquors generally; increasing from nineteen to twenty-one years the legal age for consumption of alcoholic liquors; general provisions; purpose of chapter; declaration of legislative findings, policy and intent; definitions; sales by commissioner; sales to certain persons prohibited; unlawful acts by persons and the penalties therefor; licenses; amount of license fees; licenses to private clubs; certain acts of licensee prohibited; criminal penalties; unlawful acts by persons and the penalties therefor; sales of wines; definitions; licenses; fees; general restrictions; special license for festival or fair; private wine restaurant license; unlawful acts generally; unlawful acts by persons and the penalties therefor; duties and powers of commissioner; rules and regulations; bond required of distributors and suppliers and amount thereof; and when retail sales and sales by private wine restaurant prohibited.

Be it enacted by the Legislature of West Virginia:

That sections one and five, article one, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-two, article three of said chapter be amended and reenacted; that said

article three be further amended by adding thereto a new section, designated section twenty-two-a; that section fifteen, article four of said chapter be amended and reenacted; that section twelve, article seven of said chapter be amended and reenacted; that said article seven be further amended by adding thereto a new section, designated section twelve-a; that sections two, three, twenty, twenty-three, twenty-nine and thirty-four, article eight of said chapter be amended and reenacted; and that said article eight be further amended by adding thereto a new section, designated section twenty-a, all to read as follows:

Article

1. General provisions.
3. Sales by Commissioner.
4. Licenses.
7. Licenses to Private Clubs.
8. Sale of Wines.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-1. Purpose of chapter; declaration of legislative findings; policy and intent.

§60-1-5. Definitions.

§60-1-1. Purpose of chapter; declaration of legislative findings, policy and intent.

1 The purpose of this chapter is to give effect to the
2 mandate of the people expressed in the repeal of the state
3 prohibition amendment; and it is hereby found by the
4 Legislature and declared to be the public policy of this state
5 to regulate and control the manufacture, sale, distribution,
6 transportation, storage and consumption of alcoholic
7 liquors and at the same time to assure the greatest degree of
8 personal freedom consistent with the health, safety,
9 welfare, peace and good morals of the people of this state.
10 To these ends the police power of this state is pledged to the
11 sound control and the temperate use of alcoholic liquors. In
12 order to further promote and foster the hereinabove policy
13 of the Legislature, the provisions of this chapter and of the
14 rules and regulations promulgated pursuant thereto shall
15 be construed so as to accomplish and effectuate these stated
16 purposes.

§60-1-5. Definitions.

- 1 For the purposes of this chapter:

2 "Alcohol" shall mean ethyl alcohol whatever its origin
3 and shall include synthetic ethyl alcohol but not denatured
4 alcohol.

5 "Beer" shall mean any beverage obtained by the
6 fermentation of barley, malt, hops, or any other similar
7 product or substitute, and containing more alcohol than
8 that of nonintoxicating beer.

9 "Nonintoxicating beer" shall mean any beverage,
10 obtained by the fermentation of barley, malt, hops, or
11 similar products or substitute and containing not more
12 alcohol than that specified by section two, article sixteen,
13 chapter eleven of this code.

14 "Wine" shall mean any alcoholic beverage obtained by
15 the fermentation of the natural content of fruits, or other
16 agricultural products, containing sugar.

17 "Spirits" shall mean any alcoholic beverage obtained by
18 distillation and mixed with potable water and other
19 substances in solution, and includes brandy, rum, whiskey,
20 cordials and gin.

21 "Alcoholic liquor" shall include alcohol, beer, wine and
22 spirits, and any liquid or solid capable of being used as a
23 beverage, but shall not include nonintoxicating beer.

24 "Original package" shall mean any closed or sealed
25 container or receptacle used for holding alcoholic liquor.

26 "Sale" shall mean any transfer, exchange or barter in any
27 manner or by any means, for a consideration, and shall
28 include all sales made by principal, proprietor, agent or
29 employee.

30 "Selling" shall include solicitation or receipt of orders;
31 possession for sale; and possession with intent to sell.

32 "Person" shall mean an individual, firm, partnership,
33 limited partnership, corporation or voluntary association.

34 "Manufacture" means to distill, rectify, ferment, brew,
35 make, mix, concoct, process, blend, bottle, or fill an original
36 package with any alcoholic liquor.

37 "Manufacturer" shall mean any person engaged in the
38 manufacture of any alcoholic liquor, and among others
39 includes a distiller, a rectifier, a wine maker and a brewer.

40 "Brewery" shall mean an establishment where beer is
41 manufactured or in any way prepared.

42 "Winery" shall mean an establishment where wine is
43 manufactured or in any way prepared.

44 “Distillery” shall mean an establishment where alcoholic
45 liquor other than wine or beer is manufactured or in any
46 way prepared.

47 “Public place” shall mean any place, building or
48 conveyance to which the public has, or is permitted to have
49 access, including restaurants, soda fountains, hotel dining
50 rooms, lobbies, and corridors of hotels and any highway,
51 street, lane, park or place of public resort or amusement:
52 *Provided*, That the term “public place” shall not mean or
53 include any of the above-named places or any portion or
54 portions thereof which qualify and are licensed under the
55 provisions of this chapter to sell alcoholic liquors for
56 consumption on the premises.

57 “State liquor store” shall mean a store established and
58 operated by the commission under this chapter for the sale
59 of alcoholic liquor in the original package for consumption
60 off the premises.

61 “An agency” shall mean a drugstore, grocery store or
62 general store designated by the commission as a retail
63 distributor of alcoholic liquor for the West Virginia alcohol
64 beverage control commissioner.

65 “Department” shall mean the organization through
66 which the commission exercises powers imposed upon it by
67 this chapter.

68 “Commissioner” or “commission” shall mean the West
69 Virginia alcohol beverage control commissioner.

70 “Intoxicated” shall mean having one’s faculties impaired
71 by alcohol or other drugs to the point where physical or
72 mental control or both are markedly diminished.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-22. Sales to certain persons prohibited.

§60-3-22a. Unlawful acts by persons.

§60-3-22. Sales to certain persons prohibited.

- 1 Alcoholic liquors shall not be sold to a person who is:
- 2 (1) Less than twenty-one years of age;
- 3 (2) An habitual drunkard;
- 4 (3) Intoxicated;
- 5 (4) Addicted to the use of any controlled substance as
- 6 defined by any of the provisions of chapter sixty-a of this
- 7 code; or

8 (5) Mentally incompetent.

§60-3-22a. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years who,
2 for the purpose of purchasing alcoholic liquors from a state
3 liquor store or an agency, misrepresents his or her age, or
4 who for such purpose presents or offers any written
5 evidence of age which is false, fraudulent or not actually his
6 or her own, or who illegally attempts to purchase alcoholic
7 liquors from a state liquor store or an agency, is guilty of a
8 misdemeanor, and, upon conviction thereof, shall be fined
9 in an amount not to exceed fifty dollars or shall be
10 imprisoned in the county jail for a period not to exceed
11 seventy-two hours, or both such fine and imprisonment, or,
12 in lieu of such fine and imprisonment, may, for the first
13 offense, be placed on probation for a period not exceeding
14 one year.

15 (b) Any person who shall knowingly buy for, give to or
16 furnish to anyone under the age of twenty-one to whom they
17 are not related by blood or marriage, any alcoholic liquors
18 from whatever source, is guilty of a misdemeanor and shall,
19 upon conviction thereof, be fined in an amount not to
20 exceed one hundred dollars or shall be imprisoned in the
21 county jail for a period not to exceed ten days, or both such
22 fine and imprisonment.

ARTICLE 4. LICENSES.

§60-4-15. Amount of license fees.

1 A person to whom a license is issued under the provisions
2 of this chapter shall pay annually to the commissioner a
3 license fee as follows, for:

- 4 (1) Distilleries, one thousand five hundred dollars;
- 5 (2) Wineries, one thousand five hundred dollars;
- 6 (3) Breweries, two hundred fifty dollars;
- 7 (4) Bottling plants, one hundred dollars;
- 8 (5) Wholesale druggists, fifty dollars;
- 9 (6) Institutions, ten dollars;
- 10 (7) Industrial use, fifty dollars;
- 11 (8) Industrial plants producing alcohol, two hundred
12 fifty dollars;
- 13 (9) Retail druggists, ten dollars;
- 14 (10) Farm wineries, fifty dollars.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts by licensee prohibited; criminal penalties.

§60-7-12a. Unlawful acts by persons.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

- 1 (a) It shall be unlawful for any licensee, or agent,
2 employee or member thereof, on such licensee's premises to:
 - 3 (1) Sell or offer for sale any alcoholic liquors other than
4 from the original package or container;
 - 5 (2) Authorize or permit any disturbance of the peace;
6 obscene, lewd, immoral or improper entertainment,
7 conduct or practice; gambling or any slot machine, multiple
8 coin console machine, multiple coin console slot machine or
9 device in the nature of a slot machine;
 - 10 (3) Sell, give away, or permit the sale of, gift to, or the
11 procurement of any alcoholic liquors, for or to any person
12 less than twenty-one years of age;
 - 13 (4) Sell, give away, or permit the sale of, gift to, or the
14 procurement of any alcoholic liquors, for or to any mental
15 incompetent, or for a person who is physically
16 incapacitated due to consumption of alcoholic liquor or the
17 use of drugs;
 - 18 (5) Sell, give or dispense alcoholic liquors in or on any
19 licensed premises or in any rooms directly connected
20 therewith, between the hours of three o'clock a.m. and one
21 o'clock p.m. on any Sunday;
 - 22 (6) Permit the consumption by, or serve to, on the
23 licensed premises any alcoholic liquors, covered by this
24 article, to any person who is less than twenty-one years of
25 age;
 - 26 (7) With the intent to defraud, alter, change or
27 misrepresent the quality, quantity or brand name of any
28 alcoholic liquor;
 - 29 (8) Sell or offer for sale any alcoholic liquor to any
30 person who is not a duly elected or approved dues paying
31 member in good standing of said private club or a guest of
32 such member;
 - 33 (9) Permit any person who is less than eighteen years of
34 age to sell, furnish or give alcoholic liquors to any person; or
35 (10) Violate any reasonable rule or regulation of the
36 commissioner.

37 (b) It shall further be unlawful for any licensee to
38 advertise in any news media or other means, outside of the
39 licensee's premises, the fact that alcoholic liquors may be
40 purchased thereat.

41 (c) Any person who violates any of the foregoing
42 provisions shall be guilty of a misdemeanor, and, upon
43 conviction thereof, shall be punished by a fine of not less
44 than one hundred dollars nor more than five hundred
45 dollars, or by imprisonment in the county jail for a period
46 not to exceed one year, or by both fine and imprisonment.

§60-7-12a. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years who,
2 for the purpose of purchasing nonintoxicating beer or
3 alcoholic liquors from a licensee, misrepresents his or her
4 age, or who for such purpose presents or offers any written
5 evidence of age which is false, fraudulent or not actually his
6 or her own, or who illegally attempts to purchase
7 nonintoxicating beer or alcoholic liquors from a licensee, is
8 guilty of a misdemeanor, and, upon conviction thereof, shall
9 be fined in an amount not to exceed fifty dollars or shall be
10 imprisoned in the county jail for a period not to exceed
11 seventy-two hours, or both such fine and imprisonment, or,
12 in lieu of such fine and imprisonment, may, for the first
13 offense, be placed on probation for a period not exceeding
14 one year.

15 (b) Any person who shall knowingly buy for, give to or
16 furnish to anyone under the age of twenty-one to whom they
17 are not related by blood or marriage, any nonintoxicating
18 beer or alcoholic liquors purchased from a licensee, is guilty
19 of a misdemeanor and shall, upon conviction thereof, be
20 fined in an amount not to exceed one hundred dollars or
21 shall be imprisoned in the county jail for a period not to
22 exceed ten days, or both such fine and imprisonment.

ARTICLE 8. SALE OF WINES.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

§60-8-3. Licenses; fees; general restrictions.

§60-8-20. Unlawful acts generally.

§60-8-20a. Unlawful acts by persons.

§60-8-23. Duties and powers of commissioner; rules and regulations.

§60-8-29. Bond required of distributors and suppliers.

§60-8-34. When retail sales prohibited.

§60-8-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 "Commissioner" or "commission" means the West
4 Virginia alcohol beverage control commissioner.

5 "Distributor" means any person whose principal place of
6 business is within the state of West Virginia, and who is
7 engaged in selling or distributing wine to retailers or
8 private wine restaurants and selling or distributing port,
9 sherry and madeira wines to wine specialty shops under
10 authority of this article and actually maintains a warehouse
11 in this state for the distribution of wine.

12 "Fortified wine" shall mean any wine to which brandy or
13 other alcohol has been added and shall include dessert
14 wines which are not fortified.

15 "Grocery store" means any retail establishment,
16 commonly known as a grocery store, supermarket or
17 delicatessen, where food, food products and supplies for the
18 table are sold for consumption off the premises with
19 average monthly sales (exclusive of sales of wines) of not
20 less than three thousand dollars and an average monthly
21 inventory (exclusive of inventory of wine) of not less than
22 three thousand dollars. The term "grocery store" shall also
23 include and mean a separate and segregated portion of any
24 other retail store which is dedicated solely to the sale of
25 food, food products and supplies for the table for
26 consumption off the premises with average monthly sales
27 with respect to such separate or segregated portion
28 (exclusive of sales of wine) of not less than three thousand
29 dollars and an average monthly inventory (exclusive of
30 inventory of wine) of not less than three thousand dollars.

31 "Licensee" means the holder of a license granted under
32 the provisions of this article.

33 "Private wine restaurant" means a restaurant which: (1)
34 Is a partnership, limited partnership, corporation,
35 unincorporated association or other business entity which
36 has as its principal purpose the business of serving meals on
37 its premises to its members and their guests; (2) is licensed
38 under the provisions of this article as to all of its premises or

39 as to a separate segregated portion of its premises to serve
40 wine to its members and their guests when such sale
41 accompanies the serving of food or meals; and (3) admits
42 only duly elected and approved dues paying members and
43 their guests while in the company of a member, and does not
44 admit the general public.

45 "Retailer" means any person licensed to sell wine at retail
46 to the public at his established place of business for off-
47 premises consumption and who is licensed to do so under
48 authority of this article.

49 "Supplier" means any manufacturer, producer,
50 processor, distributor or supplier of wine who sells or offers
51 to sell or solicits or negotiates the sale of wine to any
52 licensed West Virginia distributor.

53 "Tax" includes within its meaning interest, additions to
54 tax and penalties.

55 "Taxpayer" means any person liable for any tax, interest,
56 additions to tax or penalty under the provisions of this
57 article and any person claiming a refund of tax.

58 "Varietal wine" means any wine labeled according to the
59 grape variety from which such wine is made.

60 "Vintage wine" or "vintage-dated wine" means wines
61 from which the grapes used to produce such wine are
62 harvested during a particular year or wines produced from
63 the grapes of a particular harvest in a particular region of
64 production.

65 "Wine" means any alcoholic beverage obtained by the
66 natural fermentation of the natural content of grapes, other
67 fruits or honey or other agricultural products containing
68 sugar and to which no alcohol has been added and shall
69 include table wine, and shall exclude fortified wine and
70 shall also exclude any product defined as or embraced
71 within the definition of nonintoxicating beer under the
72 provisions of article sixteen, chapter eleven of this code.

73 "Wine specialty shop" means a retailer who shall deal
74 principally in the sale of table wine, certain fortified wines,
75 wine accessories and food or foodstuffs normally associated
76 with wine and (1) who shall maintain a representative
77 number of such wines for sale in his inventory which are
78 designated by label as varietal wine, vintage, generic and/or
79 according to region of production and the inventory shall
80 contain not less than fifteen percent vintage or vintage-

81 dated wine by actual bottle count and (2) who, any other
82 provisions of this code to the contrary notwithstanding,
83 may maintain an inventory of port, sherry and madiera
84 wines having an alcoholic content of not more than twenty-
85 two percent alcohol by volume and which have been
86 matured in wooden barrels or casks.

§60-8-3. Licenses; fees; general restrictions.

1 (a) Except as to farm wineries as defined by section
2 five-a, article one of this chapter, no person may engage in
3 business in the capacity of a distributor, retailer or private
4 wine restaurant without first obtaining a license from the
5 commissioner, nor shall a person continue to engage in any
6 such activity after his license has expired, been suspended
7 or revoked. No person may be licensed simultaneously as a
8 distributor and a retailer, as a distributor and a private
9 wine restaurant, or as a retailer and a private wine
10 restaurant.

11 (b) The commissioner shall collect an annual fee for
12 licenses issued under this article, as follows:

13 (1) Twenty-five hundred dollars per year for a
14 distributor's license and each separate warehouse or other
15 facility from which a distributor sells, transfers or delivers
16 wine shall be separately licensed and there shall be
17 collected with respect to each such location the annual
18 license fee of twenty-five hundred dollars as herein
19 provided.

20 (2) One hundred fifty dollars per year for a retailer's
21 license.

22 (3) Fifty dollars per year for a wine tasting license.

23 (4) Fifty dollars for each sales representative of or
24 employed by a licensed distributor.

25 (5) Two hundred fifty dollars per year for a private wine
26 restaurant license, and each separate restaurant from
27 which a licensee sells wine shall be separately licensed and
28 there shall be collected with respect to each such location
29 the annual license fee of two hundred fifty dollars as herein
30 provided.

31 (c) The license period shall begin on the first day of July
32 of each year and end on the thirtieth day of June of the
33 following year, and if granted for a less period, the same
34 shall be computed semiannually in proportion to the
35 remainder of the fiscal year.

36 (d) No retailer may be licensed as a private club as
37 provided by article seven of this chapter.

38 (e) No retailer may be licensed as a Class A retail dealer
39 in nonintoxicating beer as provided by article sixteen,
40 chapter eleven of this code: *Provided*, That a delicatessen
41 which is a grocery store as defined in section two of this
42 article and which is licensed as a Class A retail dealer in
43 nonintoxicating beer, may be a retailer under this article:
44 *Provided, however*, That any delicatessen licensed in both
45 such capacities must maintain average monthly sales
46 exclusive of sales of wine and nonintoxicating beer which
47 exceed the average monthly sales of nonintoxicating beer.

48 (f) A retailer under this article may also hold a wine
49 tasting license authorizing such retailer to serve
50 complimentary samples of wine in moderate quantities for
51 tasting. Such retailer shall organize a winetaster's club,
52 which has at least fifty duly elected or approved dues
53 paying members in good standing. Such club shall meet on
54 the retailer's premises not more than one time per week and
55 shall either meet at a time when the premises are closed to
56 the general public, or shall meet in a separate segregated
57 facility on the premises to which the general public is not
58 admitted. Attendance at tastings shall be limited to duly
59 elected or approved dues paying members and their guests.

60 (g) A retailer who has more than one place of retail
61 business shall obtain a license for each separate retail
62 establishment. A retailer's license may be issued only to the
63 proprietor or owner of a bona fide grocery store or wine
64 specialty shop.

65 (h) The commissioner may issue a special license for the
66 retail sale of wine at any festival or fair which is endorsed or
67 sponsored by the governing body of a municipality or a
68 county commission. Such special license shall be issued for
69 a term of no longer than ten consecutive days and the fee
70 therefor shall be two hundred fifty dollars regardless of
71 the term of the license. The festival or fair committee or the
72 governing body shall designate a person to organize a club
73 under a name which includes the name of the festival or fair
74 and the words "wine club." The license shall be issued in the
75 name of the wine club. A licensee may not commence the
76 sale of wine as provided for in this subsection until the wine
77 club has at least fifty dues paying members who have been

78 enrolled and to whom membership cards have been issued.
79 Thereafter, new members may be enrolled and issued
80 membership cards at any time during the period for which
81 the license is issued. A wine club licensed under the
82 provisions of this subsection may sell wine only to its
83 members, and in portions not to exceed eight ounces per
84 serving. Such sales shall take place on premises or in an area
85 cordoned or segregated so as to be closed to the general
86 public, and the general public shall not be admitted to such
87 premises or area. A licensee under the provisions of this
88 subsection shall be authorized to serve complimentary
89 samples of wine in moderate quantities for tasting.

90 A license issued under the provisions of this subsection
91 and the licensee holding such license shall be subject to all
92 other provisions of this article and the rules, regulations
93 and orders of the commissioner relating to such special
94 license: *Provided*, That the commissioner may by rule,
95 regulation, or order provide for certain waivers or
96 exceptions with respect to such provisions, rules,
97 regulations, or order as the circumstances of each such
98 festival or fair may require, including, without limitation,
99 the right to revoke or suspend any license issued pursuant to
100 this section prior to any notice or hearing notwithstanding
101 the provisions of section twelve of this article: *Provided*,
102 *however*, That under no circumstances shall the provisions
103 of subsections (c) or (d), section twenty of this article be
104 waived nor shall any exception be granted with respect
105 thereto.

106 A license issued under the provisions of this subsection
107 and the licensee holding such license shall not be subject to
108 the provisions of subsection (g) of this section.

109 (i) A license to sell wine granted to a private wine
110 restaurant under the provisions of this article entitles the
111 operator to sell and serve wine, for consumption on the
112 premises of the licensee, when such sale accompanies the
113 serving of food or a meal to its members and their guests in
114 accordance with the provisions of this article. Such
115 licensees are authorized to keep and maintain on their
116 premises a supply of wine in such quantities as may be
117 appropriate for the conduct of operations thereof. Any sale
118 of wine so made shall be subject to all restrictions set forth
119 in section twenty of this article. A private wine restaurant

120 may also be licensed as a Class A retail dealer in
121 nonintoxicating beer as provided by article sixteen, chapter
122 eleven of this code.

123 (j) With respect to subsections (h) and (i) of this section,
124 the commissioner shall promulgate rules and regulations in
125 regard to the form of the applications, the suitability of both
126 the applicant and location of the licensed premises and such
127 other rules and regulations deemed necessary to carry the
128 provisions of such subsections into effect.

§60-8-20. Unlawful acts generally.

1 It shall be unlawful:

2 (a) For a distributor to sell or deliver wine purchased or
3 acquired from any source other than a person registered
4 under the provisions of section six, article eight, chapter
5 sixty of this code, or for a retailer to sell or deliver wine
6 purchased or acquired from any source other than a
7 licensed distributor or a farm winery as defined in section
8 five-a, article one of this chapter;

9 (b) Unless otherwise specifically provided for by the
10 provisions of this article, for a licensee under this article to
11 acquire, transport, possess for sale, or sell wine other than
12 in the original package;

13 (c) For a licensee, his servants, agents or employees to
14 sell, furnish or give wine to any person less than twenty-one
15 years of age, or to a mental incompetent, or person who is
16 physically incapacitated due to the consumption of
17 alcoholic liquor or the use of drugs;

18 (d) For a licensee to permit a person who is less than
19 eighteen years of age to sell, furnish or give wine to any
20 person;

21 (e) For a distributor to sell or deliver any brand of wine
22 purchased or acquired from any source other than the
23 primary source of supply of the wine which granted the
24 distributor the right to sell such brand at wholesale. For the
25 purposes of this article, "primary source of supply" means
26 the vintner of the wine, the importer of a foreign wine who
27 imports the wine into the United States, the owner of a wine
28 at the time it becomes a marketable product, the bottler of a
29 wine, or an agent specifically authorized by any of the
30 above-enumerated persons to make a sale of the wine to a
31 West Virginia distributor: *Provided*, That no retailer shall

32 sell or deliver wine purchased or acquired from any source
33 other than a distributor licensed as such in this state:
34 *Provided, however,* That nothing herein shall be deemed to
35 prohibit sales of convenience between distributors licensed
36 in this state wherein one such distributor sells, transfers or
37 delivers to another such distributor a particular brand or
38 brands for sale at wholesale, of which brand or brands such
39 other distributor may be temporarily out of stock. The
40 commissioner shall promulgate such rules or regulations as
41 may be necessary to carry this subsection into effect;

42 (f) For a person to violate any reasonable rule or
43 regulation promulgated by the commissioner under this
44 article;

45 (g) Nothing in this article, nor any rule or regulation of
46 the commissioner, shall prevent or be deemed to prohibit
47 any licensee from employing any person who is at least
48 eighteen years of age to serve in any licensee's lawful
49 employment, including the sale or delivery of wine under
50 the provisions of this article. With the prior approval of the
51 commissioner, a licensee whose principal business is the
52 sale of food or consumer goods or the providing of
53 recreational activities, including, but not limited to,
54 nationally franchised fast food outlets, family-oriented
55 restaurants, bowling alleys, drug stores, discount stores,
56 grocery stores, and convenience stores, may employ persons
57 who are less than eighteen years of age but at least sixteen
58 years of age: *Provided,* That such person's duties shall not
59 include the sale or delivery of nonintoxicating beer or
60 alcoholic liquors: *Provided, however,* That the
61 authorization to employ such persons under the age of
62 eighteen years shall be clearly indicated on the licensee's
63 license.

§60-8-20a. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years who,
2 for the purpose of purchasing wine or other alcoholic
3 liquors from a licensee, misrepresents his or her age, or who
4 for such purpose presents or offers any written evidence of
5 age which is false, fraudulent or not actually his or her own,
6 or who illegally attempts to purchase wine or other
7 alcoholic liquors, is guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined in an amount not to exceed

9 fifty dollars or shall be imprisoned in the county jail for a
10 period not to exceed seventy-two hours, or both such fine
11 and imprisonment, or, in lieu of such fine and
12 imprisonment, may, for the first offense, be placed on
13 probation for a period not exceeding one year.

14 (b) Any person who shall knowingly buy for, give to or
15 furnish wine or other alcoholic liquors from any source to
16 anyone under the age of twenty-one to whom they are not
17 related by blood or marriage, is guilty of a misdemeanor and
18 shall, upon conviction thereof, be fined in an amount not to
19 exceed one hundred dollars or shall be imprisoned in the
20 county jail for a period not to exceed ten days, or both such
21 fine and imprisonment.

§60-8-23. Duties and powers of commissioner; rules and regulations.

1 (a) The commissioner is hereby authorized:

2 (1) To enforce the provisions of this article.

3 (2) To enter the premises of any licensee at reasonable
4 times for the purpose of inspecting the premises, and
5 determining the compliance of the licensee with the
6 provisions of this article and any rules and regulations
7 promulgated by the commissioner.

8 (3) In addition to rules and regulations relating to the
9 tax imposed by section four of this article or otherwise
10 authorized by this article, to promulgate reasonable rules
11 and regulations as he deems necessary for the execution and
12 enforcement of the provisions of this article, which may
13 include, but shall not be limited to:

14 (A) The transport, use, handling, service and sale of
15 wine;

16 (B) Establishing standards of identity, quality and
17 purity to protect the public against wine containing
18 deleterious, harmful or impure substances or elements and
19 against spurious or imitation wines and wines unfit for
20 human consumption; and

21 (C) Restricting the content of wine advertising so as to
22 prohibit false or misleading claims, or depictions or
23 descriptions of wine being consumed irresponsibly or
24 immoderately, or advertising presentations designed to
25 appeal to persons below the legal drinking age: *Provided,*
26 That the commissioner shall not promulgate any rule or

27 regulation which prohibits the advertising of a particular
28 brand or brands of wine and the price thereof: *Provided,*
29 *however,* That price shall not be advertised in a medium of
30 electronic communication subject to the jurisdiction of the
31 federal communications commission.

32 (4) To issue subpoenas and subpoenas duces tecum for
33 the purpose of conducting hearings under the provisions of
34 section twelve of this article, which subpoenas and
35 subpoenas duces tecum shall be issued in the time, for the
36 fees, and shall be enforced in the manner specified in
37 section one, article five, chapter twenty-nine-a of this code
38 with like effect as if said section one was set forth in extenso
39 in this subdivision.

40 (b) The authority granted in subsections (a), (b) and (d)
41 of this section may also be exercised by the duly authorized
42 or designated agents of the commissioner.

43 (c) Except as may be in this article to the contrary, the
44 commissioner shall not have authority by rule or regulation
45 or otherwise to regulate markups, prices, discounts,
46 allowances, or other terms of sale at which wine may be
47 purchased or sold by wine distributors or licensees
48 authorized to sell wine at retail or to change, nullify or vary
49 the terms of any agreement between a wine manufacturer or
50 supplier and a wine distributor, but nothing herein shall be
51 deemed to authorize or permit any discriminatory practice
52 prohibited by subsection (a), section thirty-one of this
53 article.

54 (d) All rules and regulations promulgated by the
55 commissioner pursuant to this article shall be so
56 promulgated in accordance with the provisions of chapter
57 twenty-nine-a of this code. The rules and regulations
58 promulgated pursuant to the prior enactment of this article
59 and not disapproved by the Legislature shall remain in full
60 force and effect to the extent that such rules and regulations
61 are not abrogated and made null and void by the
62 reenactment of sections of this article during the regular
63 session of the Legislature for the year one thousand nine
64 hundred eighty-six. Any rule or regulation which is
65 inconsistent or contrary in any way to any provision of
66 this article now or hereafter enacted is null and void.

§60-8-29. Bond required of distributors and suppliers.

1 Each applicant for a distributor's license or each

2 company registered as a supplier shall furnish at the time of
3 application a bond with a corporate surety authorized to
4 transact business in this state, payable to the state, and
5 conditioned on the payment of all taxes and fees herein
6 prescribed and on the faithful performance of and
7 compliance with the provisions of this article.

8 The penal sum of the bond for distributors shall be ten
9 thousand dollars, and the penal sum of the bond for
10 suppliers shall be twenty-five thousand dollars. Each
11 distributor shall be required to furnish separate bond for
12 each location or separate place of business from which wine
13 is distributed, sold, or delivered. Revocation or forfeiture of
14 the bond furnished for any such location may, in the
15 discretion of the commissioner, cause the revocation or
16 forfeiture of all such bonds furnished by the distributor
17 suffering such revocation or forfeiture.

§60-8-34. When retail sales prohibited.

1 It shall be unlawful for a retailer, or a private wine
2 restaurant licensee, his servants, agents or employees to sell
3 or deliver wine between the hours of two o'clock a.m. and
4 one o'clock p.m. on Sundays, or between the hours of two
5 o'clock a.m. and seven o'clock a.m. on weekdays and
6 Saturdays.

CHAPTER 7

(Com. Sub. for H. B. 1323—By Delegate Hatfield and Delegate Flanigan)

[Passed March 8, 1986: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections four-a and seven-a, relating to public health; uniform anatomical gift act; request for consent to an anatomical gift; prohibition of sales and purchases of human organs; penalties.

Be it enacted by the Legislature of West Virginia:

That article nineteen, chapter sixteen of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections four-a and seven-a, to read as follows:

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-4a. Request for consent to an anatomical gift.

§16-19-7a. Prohibition of sales and purchases of human organs; penalties.

§16-19-4a. Request for consent to an anatomical gift.

1 (a) Where, based on accepted medical standards, a
2 patient is a suitable candidate for organ or tissue
3 donation, the person in charge of a hospital, or his or
4 her designated representative other than a person
5 connected with the determination of death, shall at the
6 time of death request persons listed in this section for
7 consent to an anatomical gift. In the order of priority
8 stated and in the absence of actual notice of contrary
9 indications by the decedent or actual notice of opposition
10 by a member of the same or a prior class, any of the
11 following persons may give all or any part of the
12 decedent's body for any purpose specified in this article:

13 (1) The spouse;

14 (2) An adult son or daughter;

15 (3) Either parent;

16 (4) An adult brother or sister;

17 (5) A guardian of the person of the decedent at the
18 time of his death.

19 Where the person in charge of a hospital or his or her
20 designee has received actual notice of opposition from
21 any of the persons named in this subsection or where
22 there is otherwise reason to believe that an anatomical
23 gift is contrary to the decedent's religious beliefs, such
24 gift of all or any part of the decedent's body shall not
25 be requested. Where a donation is requested, consent or
26 refusal need only be obtained from the person or persons
27 in the highest priority class available.

28 (b) Where a donation is requested, the person in
29 charge of a hospital or his designated representative
30 shall complete a certificate of request for an anatomical

31 gift, on a form supplied by the hospital. Said certificate
32 shall include a statement to the effect that a request for
33 consent to an anatomical gift has been made, and shall
34 further indicate thereupon whether or not consent was
35 granted, the name of the person granting or refusing the
36 consent, and his or her relationship to the decedent.
37 Upon completion of the certificate, said person shall
38 attach the certificate of request for an anatomical gift
39 to the death certificate.

40 (c) A gift made pursuant to the request required by
41 this section shall be executed pursuant to applicable
42 provisions of article nineteen of this chapter.

43 (d) The director of health shall establish regulations
44 concerning the training of hospital employees who may
45 be designated to perform the request, and the proce-
46 dures to be employed in making it.

47 (e) The director of health shall establish such addi-
48 tional regulations as are necessary for the implementa-
49 tion of this section.

50 (f) No hospital or person in charge of a hospital or
51 his or her designated representatives shall be liable for
52 damages for any action taken in good faith in the
53 administering of the provisions of the article.

**§16-19-7a. Prohibition of sales and purchases of human
organs; penalties.**

1 It shall be unlawful for any person to knowingly
2 acquire, receive, or otherwise transfer for valuable
3 consideration any human organ for use in human
4 transplantation. The term human organ means the
5 human kidney, liver, heart, lung, bone marrow, and any
6 other human organ or tissue as may be designated by
7 the director of health but shall exclude blood. The term
8 "valuable consideration" does not include the reasonable
9 payments associated with the removal, transportation,
10 implantation, processing, preservation, quality control,
11 and storage of a human organ or the expenses of travel,
12 housing, lost wages incurred by the donor of a human
13 organ in connection with the donation of the organ, or
14 expenses incurred by nonprofit agencies or corporations

15 to recover expenses incurred while offering services
 16 related to the location, maintenance and distribution of
 17 said human organs. Any person who violates this section
 18 is guilty of a misdemeanor, and, upon conviction thereof,
 19 shall be fined not less than five hundred nor more than
 20 one thousand dollars.

CHAPTER 8

(H. B. 1440—By Delegate Jordan and Delegate Shanholtz)

[Passed January 28, 1986; 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-six, to the State Board of Insurance, Account No. 2250, supplementing chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated January 8, 1986, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1985-86, 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. 2250, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented by adding thereto the following sum to the designated line item:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.

3

EXECUTIVE

4

20—*State Board of Insurance*

5

Acct. No. 2250

6

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10

State
General
Revenue
Fiscal Year
1985-1986

11

5 Premiums, Claims and

12

6 Other Expenses—Total \$ — \$ 3,700,000

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The purpose of this supplementary appropriation bill is to supplement the designated line item in the budget bill for the current fiscal year of 1985-86 in the amount of \$3,700,000; thus providing a new total amount for such line item in the aggregate of \$7,700,000. Such \$3,700,000 will provide immediate funds for payment of overdue premiums for insurers in order to maintain coverage and prevent loss thereof. The supplementary appropriation shall be available for expenditure upon the effective date of the bill.

CHAPTER 9

(Com. Sub. for S. B. 489—By Senators Tomblin, Fanning and R. Williams)

[Passed March 1, 1986; 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-six, to the Department of Education, Account No. 2950, supplementing chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document dated January 8, 1986, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1985-86, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations made to Account No. 2950, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, be supplemented and amended with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EDUCATIONAL

4 36—*State Department of Education*

5 (WV Code Chapters 18 and 18A)

6 Acct. No. 2950

7	1	Professional Educators	\$461,967,519
8	3	Fixed Charges	70,263,243
9	6	Other Current Expense	40,632,663
10	8	Total Basic Foundation Program	792,984,226
11	10	Total Basic State Aid	689,336,039
12	12	Staffing Improvement	1,882,395
13		Service Personnel	(1,193,535)
14	14	Total	\$694,117,877

15 The purpose of this supplemental appropriation bill is
 16 to appropriate state general revenue funds in the amount
 17 of \$807,894 for the Basic Foundation Program for state
 18 schools to meet an additional cost requirement by 1985,
 19 legislation under Code §18A-4-5. Such increased amounts
 20 shall be available for expenditure upon the effective date
 21 of this bill.

CHAPTER 10

(S. B. 345—Originating in the Senate Committee on Finance)

[Passed January 30, 1986; 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 revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, to the Department of Human Services, Account No. 4050, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature Executive Budget Document, dated January 8, 1986, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1985-86, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 4050, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented by adding thereto the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	HEALTH AND HUMAN SERVICES	
4	51— <i>Department of Human Services</i>	
5	Acct. No. 4050	
6	6 Assistance Payments	\$ 7,817,900
7	21 Total	\$128,012,829
8	The purpose of this supplementary appropriation bill	

9 is to supplement the aforesaid account and item therein
 10 for expenditure in the current fiscal year 1985-86. Such
 11 amount shall be available for expenditure upon the effec-
 12 tive date of this bill.

CHAPTER 11

(S. B. 344—Originating in the Senate Committee on Finance)

[Passed February 4, 1986; 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 revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, to the Department of Employment Security, Account No. 4510, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature Executive Budget Document, dated January 8, 1986, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1985-86, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 4510, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented by adding thereto the following sum to the designated line item:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 BUSINESS AND INDUSTRIAL RELATIONS

4 56—*Department of Employment Security*

5 Acct. No. 4510

6	1	Interest Assessment	\$ 8,600,000
6a	2	Total	\$ 10,500,000

7 The purpose of this supplementary appropriation bill
8 is to supplement the aforesaid account and item therein
9 for expenditure in the current fiscal year 1985-86. Such
10 amount shall be available for expenditure upon the
11 effective date of this bill.

12 The above appropriation is intended to pay the federal
13 government interest due on loan advances made to the
14 state of West Virginia for payment of unemployment
15 compensation benefits.

CHAPTER 12

(H. B. 1584—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of
the Executive)

[Passed February 25, 1986; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, to the State Department of Highways, Account No. 6700, supplementing chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 8, 1986, wherein on page XI thereof is set forth the revenues and expenditures of the State Road Fund, including fiscal year 1985-86; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1985-86, 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 the total appropriations made to the state Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented as follows:

TITLE 2. APPROPRIATIONS.

Section 3. Appropriations from other funds.

88—*State Department of Highways*

(WV Code Chapters 17 and 17C)

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

	Other Funds Fiscal Year 1985-1986
1 Maintenance Expressway	
2 Trunkline and Feeder	\$ 52,980,000
3 Maintenance, State Local Service	71,586,000
4 Maintenance, Contract Paving and	
5 Secondary Road Maintenance.....	19,007,000
6 Inventory Revolving	1,510,000
7 Toll Road Examination.....	1,000,000
8 Equipment Revolving	5,097,000
9 General Operations	19,056,000*
10 Annual Increment	178,000
11 Debt Service.....	86,150,000
12 Interstate Construction	142,489,000
13 Other Federal Aid Programs	159,659,000
14 Appalachian Program	32,440,000
15 Nonfederal Aid Construction	<u>5,757,000</u>
16 Total	\$596,909,000

17 * Includes salary of Commissioner at \$47,500 per annum.

18 The purpose of this supplementary appropriation bill
19 is to supplement existing items in the aforesaid account
20 for expenditure in the fiscal year of 1985-1986, and to

21 reflect the new total spending authority of the spending
22 unit for such fiscal year. Such increased amounts shall
23 be available for expenditure upon the effective date of
24 this bill.

CHAPTER 13

(H. B. 1828—By Delegate White and Delegate Pritt)

[Passed February 14, 1986; 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 the Hospital Services Revenue Account (Special Fund) remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, to the State Health Department, Account No. 8500, supplementing chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the executive budget document, dated January 8, 1986, wherein is set forth a statement for the Hospital Services Revenue Account (Special Fund) of the State Health Department; and

WHEREAS, It appears from such executive budget document that anticipated receipts to such special fund will make available a sufficient balance unappropriated for the current fiscal year 1985-86, 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. 8500, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented by adding thereto the following sum to the designated new line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 3. Appropriations from other funds.

3	109— <i>State Health Department—Hospital Services</i>		
4	<i>Revenue Account (Special Fund)</i>		
5	(Capital Improvement, Renovation and Operation)		
6	Acct. No. 8500		
7	TO BE PAID FROM SPECIAL REVENUE FUND		
8			State
9			General
10			Revenue
11			Fiscal Year
12			1985-1986
13	64a Behavioral Health Service—		
14	64b operating funds for Group		
15	64c Homes, Day Care and Medley	\$ 2,000,000	
16	65 Total.....	\$ 11,839,500	

17 Any unexpended balance remaining in the appropri-
 18 ation balances at the close of the fiscal year 1985-86, is
 19 hereby reappropriated for expenditure during fiscal
 20 year 1986-87.

21 The purpose of this supplementary appropriation bill
 22 is to supplement this account with the above new line
 23 item and amount in the budget bill for the current fiscal
 24 year of 1985-86, thus increasing the total of projects in
 25 such account to \$11,839,500.

CHAPTER 14

(H. B. 2001—By Delegate Farley)

[Passed February 24, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and adding new language of appropriation and direction to the account of the State Department of Highways, Account No. 6700, authorizing retention of employer retirement contribution payments, usually transferred to the West Virginia Public Employees Retirement Board, and use of such moneys for road contract paving purposes by the

department, for the remainder of the current fiscal year 1985-86, supplementing chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That employer retirement contribution moneys of the State Department of Highways, Account No. 6700, usually transferred to the West Virginia Public Employees Retirement Board as employer's share of retirement costs for a department or spending unit operating from nongeneral revenue funds, so transferable for the remainder of the current fiscal year 1985-86, and as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended, and language of appropriation and direction be added to such account to authorize retention of such employer retirement contribution moneys and their use by such department for road contract paving purposes during the remainder of fiscal year 1985-86, and with such new language of appropriation and direction to read as follows:

1 **TITLE 2. APPROPRIATIONS.**

2 **Section 3. Appropriations from other funds.**

3 **88—State Department of Highways**

4 **Acct. No. 6700**

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

6 33 The employer contribution moneys usually
7 34 transferred to the West Virginia Public Em-
8 35 ployees Retirement Board as payments by the
9 36 department for its share of employer's retirement
10 37 costs will not be made during the remainder of
11 38 current fiscal year 1985-86, but such moneys shall
12 39 be retained by the department and expended for
13 40 road contract paving purposes under item four of
14 41 this account, designated Maintenance, Contract
15 42 Paving and Secondary Road Maintenance.

16 The purpose of this supplementary appropriation bill
17 is to supplement, amend, and add new language of
18 appropriation and direction authorizing retention of

19 employer retirement contribution payments, usually
 20 transferred and made by the department to the West
 21 Virginia Public Employees Retirement Board as an
 22 employer's share of retirement costs, with such moneys
 23 to be used for road contract paving purposes during the
 24 remainder of current fiscal year 1985-86.

CHAPTER 15

(H. B. 2121—By Delegate Farley)

[Passed March 5, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the State Tax Department, Account No. 1800, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 1800, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended and transferred and to thereafter to read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	EXECUTIVE	
4	18— <i>State Tax Department</i>	
5	Acct. No. 1800	
6	1	Personal Services \$ 9,415,604
7	3	Current Expenses <u>6,473,902</u>
8	9	Total \$17,245,592

9 The purpose of this supplementary appropriation bill
 10 is to supplement, amend and transfer the sum of
 11 \$273,000 from item one, "Personal Services" of the

12 existing appropriation to item three, "Current Ex-
13 penses" of such appropriation in this account for the
14 State Tax Department; with no new moneys being
15 appropriated hereby, and with such amounts as newly
16 itemized being available for expenditure during the
17 current fiscal year 1985-86 and upon the effective date
18 of this bill.

CHAPTER 16

(H. B. 1627—By Delegate Neal and Delegate Burke)

[Passed February 11, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between existing subitems of an item and a newly created subitem in the existing item and appropriation of the West Virginia Board of Regents (Control), Account No. 2790, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-six, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That existing sub-items of an item of the total appropriation of Account No. 2790, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, and a newly created subitem of such existing item in such account, be supplemented, amended and transferred and with such sub-items as to amounts to thereafter read as follows:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 EDUCATIONAL
- 4 24—*West Virginia Board of Regents (Control)*
- 5 Acct. No. 2790

			State General Revenue Fiscal Year 1985-1986
6			
7			
8			
9			
10			
11	12 Agricultural		
12	and Forestry		
13	13 Experiment		
14	Station-W.V.U.	\$ —	\$ 2,151,657
15	Personal Services	—	(1,770,782)
16	Current Expenses ...	—	(315,875)
17	Equipment	—	(65,000)

18 The purpose of this supplementary appropriation bill
 19 is to supplement, amend and transfer the sum of
 20 \$100,000 from the subitem designated "Personal
 21 Services," of the line item designated "Agricultural and
 22 Forestry Experiment Station-W.V.U."; with \$35,000
 23 thereof going to the subitem designated "Current
 24 Expenses," and with \$65,000 thereof going to the newly
 25 created subitem designated "Equipment," and with no
 26 new moneys being hereby appropriated, but merely a
 27 transfer of present appropriation being made. The
 28 \$35,000 for the subitem designated "Current Expenses"
 29 will be used to help pay for fringe benefits, and the
 30 \$65,000 for the newly created subitem designated
 31 "Equipment" will be used to purchase research and
 32 farm equipment. The amounts, as newly itemized, shall
 33 be available for expenditure during the current fiscal
 34 year of 1985-86 and upon the effective date of this bill.

CHAPTER 17

(S. B. 706—Originating in the Senate Committee on Finance)

[Passed March 1, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Department of Education, Account No. 2950, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, as appropriated by chapter twenty-

seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 2950, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, be supplemented, amended and transferred and with such items to thereafter read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	EDUCATIONAL	
4	35— <i>Department of Education</i>	
5	(WV Code Chapters 18 and 18A)	
6	Account No. 2950	
7	1 Professional Educators	\$461,659,381
8	2 Service Personnel	163,150,300
9	5 Administrative Cost	4,342,635
10	8 Total Basic Foundation Program	792,611,604
11	10 Total Basic State Aid	688,963,417
12	12 Staffing Improvement	1,447,123
13	Professional Educators	(688,860)
14	14 Total	\$693,309,983

15 The purpose of this supplementary appropriation bill
 16 is to supplement, amend and transfer certain moneys
 17 from one item of the existing appropriation to another
 18 item of such appropriation for the designated spending
 19 unit, with no new moneys being appropriated hereby.
 20 The amounts as newly itemized for expenditure during
 21 such fiscal year shall be available for expenditure upon
 22 the effective date of this bill.

CHAPTER 18

(Com. Sub. for H. B. 1585—By Mr. Speaker, Mr. Albright, and Delegate Swann,
 by request of the Executive)

[Passed February 14, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts

between items of the existing appropriations of the Department of Corrections-Central Office, Account No. 3680, and the Department of Corrections-Correctional Units, Account No. 3770, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-six, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 3680 and Account No. 3770, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended and transferred and with such items to thereafter read as follows:

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	CORRECTIONS		
4	<i>44—Department of Corrections-Central Office</i>		
5	Acct. No. 3680		
6			State
7			General
8			Revenue
9			Fiscal Year
10			1985-1986
11	6	Adult Female	
12	7	Offenders Contract	\$ 745,901
13		Current Expenses	<u>(723,742)</u>
14	8	Total	\$ 1,537,141
15	<i>46—Department of Corrections-Correctional Units</i>		
16	Acct. No. 3770		
17	1	Personal Services	\$11,614,665
18	3	Current Expenses	6,748,394
19		Other	(5,161,507)
20	4	Repairs and Alterations	<u>339,500</u>
21	9	Total	\$21,973,830

22 The purpose of this supplementary appropriation bill
23 is to supplement, amend and transfer the sum of two
24 hundred thousand dollars, state general revenues,
25 heretofore appropriated to item seven, "Adult Female
26 Offenders Contract" item and the "Current Expenses"
27 subitem thereof in Account No. 3680, and from this
28 Central Office account to the Correctional Units
29 Account No. 3770 of the Department of Corrections
30 wherein the "Personal Services" item is increased by
31 \$50,000; the "Current Expenses" item and subitem
32 "Other" thereof is increased by \$50,000; and the
33 "Repairs and Alterations" item is increased by \$100,000;
34 and with no new moneys being appropriated hereby.
35 These amounts, as newly itemized, shall be available for
36 expenditure during the current fiscal year of 1985-86
37 and upon the effective date of this bill.

CHAPTER 19

(H. B. 1929—By Delegate Seacrist and Delegate Davis)

[Passed March 5, 1986: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of federal funds of the West Virginia Air Pollution Control Commission, Account No. 4760, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-six, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of federal funds of Account No. 4760, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended and transferred and with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations of federal funds.

3 BUSINESS AND INDUSTRIAL RELATIONS

4 61—*West Virginia Air Pollution Control Commission*

5 Acct. No. 4760

		Federal Funds Fiscal Year 1985-1986
6		
7		
8		
9		
10	1 Personal Services	\$ 744,661
11	4 Equipment	51,500

12 The purpose of this supplementary appropriation bill
 13 is to supplement, amend and transfer the sum of \$34,000
 14 of federal funds, prior appropriated to item one,
 15 "Personal Services" from such item and to item three,
 16 "Equipment," with no new federal moneys being
 17 appropriated hereby, but only a transfer of amounts
 18 within the existing appropriation being made. The
 19 amounts and line items as newly itemized for expendi-
 20 ture during the current fiscal year of 1985-86, shall be
 21 available for such expenditure upon the effective date
 22 of the bill.

CHAPTER 20

(H. B. 1586—By Mr. Speaker, Mr. Albright, and Delegate Swann,
 by request of the Executive)

[Passed February 17, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Nonintoxicating Beer Commissioner, Account No. 4900, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4900, chapter twenty-seven, acts of the Legislature, regular session, one thousand one hundred eighty-five, known as the budget bill, be supplemented, amended and transferred to read as follows:

TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUSINESS AND INDUSTRIAL RELATIONS

64—*West Virginia Nonintoxicating Beer Commissioner*

Acct. No. 4900

1	1	Personal Services	\$ 333,270
2	4	Equipment	8,300

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

CHAPTER 21

(H. B. 1827—By Delegate Burke and Delegate Neal)

[Passed February 14, 1986: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Railroad Maintenance Authority, Account No. 5690, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-six, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 5690, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended and transferred and with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CONSERVATION AND DEVELOPMENT

4 77—*West Virginia Railroad Maintenance Authority*

5 Acct. No. 5690

			State General Revenue Fiscal Year 1985-1986
6			
7			
8			
9			
10			
11	3	Current Expenses \$	— \$ 99,600
12	4	Repairs and Alterations .. \$	— \$ 220,400

13 The purpose of this supplementary appropriation bill
 14 is to supplement, amend and transfer the sum of
 15 \$50,400, state general revenues, prior appropriated to
 16 item three, "Current Expenses" to item four, "Repairs
 17 and Alterations," with no new moneys being appropri-
 18 ated hereby, but merely a transfer of present appropri-
 19 ation being made. The \$50,400 for the line-item
 20 designated "Repairs and Alterations" is needed by the
 21 West Virginia Railroad Maintenance Authority to pay
 22 for rehabilitation work on the Wheeling Terminal
 23 Industrial Line. The amounts, as newly itemized, shall
 24 be available for expenditure during the current fiscal
 25 year of 1985-86 and upon the effective date of this bill.

CHAPTER 22

(H. B. 2000—By Delegate Farley)

[Passed February 25, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, transferring
 and causing to expire into the state fund, general

revenue of the state, by adding new language of appropriation and direction (paragraph) to the account, in respect of certain employer contribution moneys contained within or receivable by the West Virginia Public Employees Retirement Board, Account No. 6140, and applicable to the remainder of the current fiscal year 1985-86, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That employer contribution moneys remaining in item one of the account of the West Virginia Public Employees Retirement Board, Account No. 6140, for departments and spending units operating from the general revenue fund and employer contribution moneys receivable by the board from departments and spending units operating from special revenue funds (except the state department of highways employer contribution moneys), applicable for the remainder of fiscal year 1985-86, and as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended, reduced, transferred and caused to expire into the state fund, general revenue of the state, by the new language of appropriation and direction (paragraph) being added to such account, with such moneys to be thereafter available for other and further appropriation, and with such new language of appropriation and direction (paragraph) to read as follows:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 " BOARD AND COMMISSIONS
- 4 84—*West Virginia Public Employees Retirement Board*
- 5 Acct. No. 6140
- 6 17 After the effective date of this paragraph which
- 7 18 is added to this account as language of appropri-
- 8 19 ation and direction, the board shall transfer and
- 9 20 cause to expire into the state fund, general revenue
- 10 21 of the state, those employer contribution moneys

11 22 remaining in item one, above, of this account and
 12 23 applicable to departments and spending units
 13 24 operating from the general revenue fund, and the
 14 25 board shall also transfer and cause to so expire the
 15 26 employer contribution moneys received after such
 16 27 effective date and applicable to the remainder of
 17 28 fiscal year 1985-86, from those departments oper-
 18 29 ating from special revenue funds except the state
 19 30 department of highways.

20 The purpose of this supplementary appropriation bill
 21 is to supplement, amend, reduce, transfer and cause to
 22 expire into the state fund, general revenue of the state,
 23 the remaining employer contribution moneys applicable
 24 to payrolls issuing subsequent to the effective date of
 25 this bill and for the remainder of the current fiscal year
 26 1985-86 of departments and spending units both
 27 operating from general revenues contained in item one
 28 of this account and operating from special revenues,
 29 with the board to receive the latter employer contribu-
 30 tion moneys subsequently and during the remainder of
 31 the current fiscal year 1985-86; with both types of
 32 employer contribution moneys to be so transferred and
 33 expired by the board, except the state department of
 34 highways.

CHAPTER 23

**(H. B. 1694—By Mr. Speaker, Mr. Albright, and Delegate Swann,
 by request of the Executive)**

[Passed February 26, 1986; 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 accrued interest, earned through the thirty-first day of December, one thousand nine hundred eighty-five, and contained in the accounts, as designated, and in the amounts, as hereinafter specified, of the West Virginia Geological Survey, Account No. 7929-08I; of the Treas-

urer's Office-Abandoned and Unclaimed Property, Account No. 8000-12I; of the Treasurer's Office-Investment Pool, Account No. 8004-11I; of the Real Estate Commission, Account No. 8010-22I; of the Office of Economic and Community Development, Domestic Violence-Operations, Account No. 8026-22I; of the Office of Economic and Community Development, Domestic Violence-Administration, Account No. 8026-23I; of the Office of Economic and Community Development, Law-Enforcement Training-Operations, Account No. 8026-24I; of the Office of Economic and Community Development, Law-Enforcement Training-Administration, Account No. 8026-25I; of the Office of Economic and Community Development-Oil Overcharge Refunds, Account No. 8046-10I; of the Regional Jail and Prison Authority, Account No. 8050-06I; of the West Virginia Board of Examiners of Radiologic Technology, Account No. 8079-06I; of the State Tax Department-Chief Inspector, Account No. 8090-06I; of the State Tax Department-Federal Reimbursement, Account No. 8090-07I; of the State Tax Department-County Tax Fund, Account No. 8090-08I; of the Oil and Gas Conservation Commission-Annual Lease Tax, Account No. 8096-06I; of the West Virginia Board of Accountancy, Account No. 8100-05I; of the West Virginia Board of Dental Examiners, Account No. 8102-15I; of the West Virginia Board of Land Surveyors, Account No. 8103-20I; of the West Virginia Board of Pharmacy, Account No. 8105-30I; of the West Virginia Board of Examiners of Practical Nurses, Account No. 8106-35I; of the West Virginia Board of Registered Nurses, Account No. 8110-55I; of the West Virginia Board of Chiropractic Examiners, Account No. 8130-05I; of the West Virginia Board of Embalmers and Funeral Directors, Account No. 8131-10I; of the Department of Finance and Administration-Revolving Fund, Account No. 8140-08I; of the Department of Finance and Administration-State Agency for Surplus Property, Account No. 8145-45I; of the Department of Finance and Administration-Information Systems Services Division, Account No. 8152-07I; of the Department of Finance and Administration-

Transportation Division, Account No. 8157-07I; of the Department of Agriculture-Indirect Cost Funds, Account No. 8185-10I; of the Department of Agriculture-Rural Resources, Account No. 8190-13I; of the Department of Agriculture-Investment Account, Account No. 8194-16I; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-06I; of the Department of Agriculture-Small Watershed Program, Account No. 8195-09I; of the Department of Corrections-Prison Industries, Account No. 8222-05I; of the Regional Jail Authority, Account No. 8225-75I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-20I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-21I; of the State Department of Education-Textbook Adoption, Account No. 8240-46I; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-07I; of State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-08I; of the State Department of Education-Cedar Lakes, Account No. 8245-12I; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-08I; of the Department of Veterans Affairs-Veterans Home Improvement, Account No. 8260-11I; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-13I; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-05I; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-06I; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-07I; of the State Board of Insurance-Premiums and Self Insured Losses, Account No. 8275-06I; of the State Board of Insurance-Professional Liability Trust Fund, Account No. 8275-07I; of the State Board of Insurance-Mine Subsidence Insurance Fund, Account No. 8275-08I; of the Public Service Commission-Special Revenue Administration, Account No. 8280-08I; of the Public Service Commis-

sion-Gas Pipeline Division, Account No. 8285-08I; of the Public Service Commission-Motor Carrier Division, Account No. 8290-08I; of the Department of Natural Resources-Watter Smith State Park, Account No. 8320-11I; of the Department of Natural Resources-Investments, Account No. 8325-09I; of the Railroad Maintenance Authority-South Branch Valley Railroad, Account No. 8344-06I; of the Department of Public Safety-Purchase of Investments, Account No. 8350-12I; of the Department of Public Safety-Criminal Investigation, Account No. 8351-29I; of the Department of Public Safety-Purchase of Investments, Account No. 8352-12I; of the Department of Public Safety-Drunk Driving Prevention, Account No. 8355-10I; of the Department of Banking-Revolving Account, Account No. 8392-06I; of the Department of Banking-Purchase of Investments, Account No. 8395-08I; of the Secretary of State-Filing Fees, Account No. 8436-06I; of the State Health Department-Investments, Account No. 8500-30I; of the Blennerhassett Historical Park, Account No. 8554-06I; of the West Virginia Geological Survey-Publication Sales, Account No. 8590-10I; of WPBY-TV-Operating Account, Account No. 8595-05I; of the WPBY-TV-Grants-Even Fund Years, Account No. 8595-08I; of the WPBY-TV-Capital Expenditure, Account No. 8595-25I; of Grandview Educational TV-Operating Expense, Account No. 8596-06I; of WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-16I; of WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-20I; of WSWP-TV-Capital Outlay, Account No. 8596-26I; of Educational Broadcasting Authority-Statewide Service, Account No. 8597-09I; of Educational Broadcasting Authority-Radio Network, Account No. 8597-10I; of Educational Broadcasting Authority-Radio Network, Account No. 8597-11I; of Educational Broadcasting Authority-WV Public Radio, Account No. 8597-14I; of Educational Broadcasting Authority-Microwave Interconnect System, Account No. 8597-17I; of Educational Broadcasting Authority-Capital Outlay-Equipment, Account No. 8597-27I; of WNPB-TV-C.P.B.-A, Account No. 8598-23I; of WNPB-

TV-C.P.B.-B, Account No. 8598-24I; of WNPB-TV-C.P.B.-B, Account No. 8598-28I; of the Department of Human Services-Child Abuse, Account No. 9155-36I; of the Economic and Community Development-Industrial Development Loan Fund, Account No. 9290-15I; of the Economic and Community Development-E.D.A.-Title IX Loan Fund, Account No. 9290-20I; of the State Building Commission-Parking Lot Operating, Account No. 9500-08I; of the State Building Commission-Operating Expense Capitol Complex, Account No. 9500-09I; of the State Building Commission-Cafeteria Operating Account, Account No. 9500-12I; of the State Building Commission-Bond Forfeiture, Account No. 9500-15I; as heretofore being invested, accruing and appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

WHEREAS, The Governor, by executive order, has required accrued interest to remain in the interest accounts and to be transferable or distributable back to their respective primary accounts; and

WHEREAS, The Legislature has determined that such amounts of interest, accrued and remaining in such interest accounts, as designated herein and in the amounts herein specified, should be expired from such specified accounts back into the state fund, general revenue of the state, so as to become available for other and further appropriations; therefore

Be it enacted by the Legislature of West Virginia:

That the accrued interest, unexpended and unencumbered, contained in the accounts, as designated, and in the amounts as hereinafter specified, earned through the thirty-first day of December, one thousand nine hundred eighty-five, and as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended, reduced and caused to expire from such designated accounts and back into the state fund, general revenue of the state, and with such amounts to be thereafter available for other and further

appropriation upon the effective date of this bill; Account No. 7929-08I -\$854.76; 8000-12I -\$100,980.70; 8004-11I -\$233.73; 8010-22I -\$81,079.14; 8026-22I -\$8,368.07; 8026-23I -\$249.54; 8026-24I -\$22,038.13; 8026-25I -\$2,330.96; 8046-10I -\$2,257.41; 8050-06I -\$9,422.26; 8079-06I -\$2,770.38; 8090-06I -\$11,993.17; 8090-07I -\$9,864.27; 8090-08I -\$10,052.22; 8096-06I -\$59,990.76; 8100-05I -\$35.73; 8120-15I -\$0.97; 8103-20I -\$560.30; 8105-30I -\$24,504.13; 8106-35I -\$10,296.75; 8110-55I -\$19,961.54; 8130-05I -\$1,469.89; 8131-10I -\$602.15; 8140-08I -\$577.11; 8145-45I -\$12,384.44; 8152-07I -\$1,308.34; 8157-07I -\$46,594.85; 8185-10I -\$20,242.02; 8190-13I -\$77,227.09; 8194-16I -\$1,533.13; 8195-06I -\$79,337.80; 8195-09I -\$54,932.61; 8222-05I -\$13,942.99; 8225-75I -\$74.76; 8240-20I -\$2,754.05; 8240-21I -\$2,020.65; 8240-46I -\$3,137.07; 8245-07I -\$16,613.12; 8245-08I -\$1,273.72; 8245-12I -\$792.71; 8250-08I -\$88,419.96; 8260-11I -\$105,787.84; 8260-13I -\$35,702.14; 8265-05I -\$1,390,205.92; 8265-06I -\$76,502.73; 8265-07I -\$94,873.18; 8275-06I -\$129,431.90; 8275-07I -\$139,946.31; 8275-08I -\$113,736.66; 8280-08I -\$171,766.33; 8285-08I -\$46,507.25; 8290-08I -\$107,937.93; 8320-11I -\$6,531.42; 8325-09I -\$1,821,576.30; 8344-06I -\$17,599.94; 8350-12I -\$8,269.64; 8351-29I -\$406.06; 8352-12I -\$11,871.16; 8355-10I -\$68,552.36; 8392-06I -\$9,361.52; 8395-08I -\$47,545.43; 8436-06I -\$83.05; 8500-30I -\$1,771,629.53; 8554-06I -\$25,111.58; 8590-10I -\$6,306.36; 8595-04I -\$1,648.35; 8595-08I -\$813.11; 8595-25I -\$4,379.74; 8596-06I -\$1,853.08; 8596-16I -\$2,173.04; 8596-20I -\$18,568.53; 8596-26I -\$811.61; 8597-09I -\$13,573.63; 8597-10I -\$2,493.06; 8597-11I -\$8,737.82; 8597-14I -\$1,330.54; 8597-17I -\$2,163.69; 8597-27I -\$1,736.82; 8598-23I -\$4,370.33; 8598-24I -\$1,525.82; 8598-28I -\$2,786.77; 9155-36I -\$4,858.63; 9290-15I -\$696,223.07; 9290-20I -\$36,812.38; 9500-08I -\$107,742.05; 9500-09I -\$293,123.63; 9500-12I -\$21,235.30; and 9500-15I -\$147.06.

- 1 The purpose of this supplementary appropriation bill
- 2 is to supplement, amend, reduce and cause to expire into
- 3 the state fund, general revenue, certain unexpended and
- 4 unencumbered amounts of accrued interest contained in
- 5 the accounts as designated and in the amounts as
- 6 specified in this bill and as earned through the thirty-
- 7 first day of December, one thousand nine hundred
- 8 eighty-five; to be thereafter available for other and

9 further appropriations, upon the effective date of this
10 bill.

CHAPTER 24

(S. B. 597—Originating in the Senate Committee on Finance)

[Passed February 27, 1986; 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 Governor's Office—Civil Contingent Fund, Account No. 1240-20 (Southern West Virginia Flood Relief), as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the sum of eight hundred thirty-two thousand dollars of the balances in Account No. 1240-20, including balances carried forward on the first day of July, one thousand nine hundred eighty-five, available for expenditure in the current fiscal year 1985-86, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

1 The purpose of this supplementary appropriation bill is
2 to supplement, amend, reduce and cause to expire out of
3 the Governor's Office—Civil Contingent Fund, Account
4 No. 1240-20, available for expenses related to the Southern
5 West Virginia Flood Relief, and into the state fund,
6 general revenue of the state, the sum of eight hundred
7 thirty-two thousand dollars.

CHAPTER 25

(S. B. 709—Originating in the Senate Committee on Finance)

[Passed February 28, 1986; 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, specified amounts of the balances in the Management Service Fee account of the Treasurer's Office, Account No. 8004-08, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the sum of five hundred thousand dollars of the balances in Account No. 8004-08, the Management Service Fee account of the Treasurer's Office, including balances carried forward on July 1, 1985, available for expenditure in the current fiscal year 1985-86, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be thereafter available for other and further appropriation upon the effective date of this bill.

- 1 The purpose of this supplementary appropriation bill is
- 2 to supplement, amend, reduce and cause to expire out of
- 3 the Management Service Fee account of the Treasurer's
- 4 Office, and into the state fund, general revenue of the
- 5 state, the sum of five hundred thousand dollars of the
- 6 money balances in such account in order to make such
- 7 sum available for other and further appropriation and
- 8 expenditure in the current fiscal year 1985-86 and upon
- 9 the effective date of the bill.

CHAPTER 26

(S. B. 724—Originating in the Senate Committee on Finance)

[Passed March 8, 1986; 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, a certain unexpended and unencumbered amount of the balance contained in the special revenue account, as designated, and in the amount, as hereinafter specified, of the Crime Victims Compensation Fund, Account No. 8412-23, as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the balance, unexpended and unencumbered, contained in the special revenue account, as designated, and in the amount as hereinafter specified, available for expenditure in the current fiscal year 1985-86, and as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended, reduced and caused to expire from such designated account and back into the state fund, general revenue of the state, and with such amount to be thereafter available for other and further appropriation upon the effective date of this bill: Account No. 8412-23, \$300,000.

1 The purpose of this supplementary appropriation bill
 2 is to supplement, amend, reduce and cause to expire into
 3 the state fund, general revenue of the state, a certain
 4 balance of special revenue account, unexpended and
 5 unencumbered, to thereafter be available for other and
 6 further appropriation upon the effective date of this bill
 7 and in the current fiscal year of 1985-86.

CHAPTER 27

(H. B. 2180—By Delegate Farley)

[Passed March 5, 1986; in effect from passage. Vetoed by the Governor.
 Amended and repassed March 7, 1986; 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 balances contained in the special revenue accounts, as designated, and in the amounts, as hereinafter specified, of the Real Estate Commission, Account No. 8010-22; of

the Regional Jail and Prison Authority, Account No. 8050-06; of the Department of Agriculture-Soil Conservation Committee, Operation Account, Account No. 8195-06; of the Department of Corrections-Prison Industries, Account No. 8222-05; of the West Virginia Railroad Maintenance Authority-South Branch Valley Railroad, Account No. 8344-06; and of the Department of Banking-Purchase of Investments, Account No. 8395-08; as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the balances, unexpended and unencumbered, contained in the special revenue accounts, as designated, and in the amounts as hereinafter specified, available for expenditure in the current fiscal year 1985-86, and as appropriated by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented, amended, reduced and caused to expire from such designated accounts and back into the state fund, general revenue of the state, and with such amounts to be thereafter available for other and further appropriation upon the effective date of this bill: Account No. 8010-22, \$250,000; Account No. 8050-06, \$300,000; Account No. 8195-06, \$350,000; Account No. 8222-05, \$25,000; Account No. 8344-06, \$25,000; and Account No. 8395-08, \$50,000.

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, certain balances of special revenue accounts, unexpended and unencumbered, to thereafter be available for other and further appropriation upon the effective date of this bill and in the current fiscal year of 1985-86.

CHAPTER 28

(H. B. 2178—By Delegate Hutchinson and Delegate Burk)

[Passed February 28, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, directing transfer of and

causing to expire, monthly, into the state fund, general revenue of the state, the unexpended and unencumbered amounts of accrued and accruing interest in the following designated interest accounts or from any principal account, should such interest have been so distributed, earned from January 1, 1986, through June 30, 1987, from accounts: Of the West Virginia Geological Survey, Account No. 7929-08I; of the Treasurer's Office-Abandoned and Unclaimed Property, Account No. 8000-12I; of the Treasurer's Office-Investment Pool, Account No. 8004-11I; of the Real Estate Commission, Account No. 8010-22I; of the Office of Economic and Community Development, Domestic Violence-Operations, Account No. 8026-22I; of the Office of Economic and Community Development, Domestic Violence-Administration, Account No. 8026-23I; of the Office of Economic and Community Development, Law-Enforcement Training-Operations, Account No. 8026-24I; of the Office of Economic and Community Development, Law-Enforcement Training- Administration, Account No. 8026-25I; of the Office of Economic and Community Development-Oil Overcharge Refunds, Account No. 8046-10I; of the Regional Jail and Prison Authority, Account No. 8050-06I; of the West Virginia Board of Examiners of Radiologic Technology, Account No. 8079-06I; of the State Tax Department-Chief Inspector, Account No. 8090-06I; of the State Tax Department-Federal Reimbursement, Account No. 8090-07I; of the State Tax Department-County Tax Fund, Account No. 8090-08I; of the Oil and Gas Conservation Commission-Annual Lease Tax, Account No. 8096-06I; of the West Virginia Board of Accountancy, Account No. 8100-05I; of the West Virginia Board of Dental Examiners, Account No. 8102-15I; of the West Virginia Board of Land Surveyors, Account No. 8103-20I; of the West Virginia Board of Pharmacy, Account No. 8105-30I; of the West Virginia Board of Examiners of Practical Nurses, Account No. 8106-35I; of the West Virginia Board of Registered Nurses, Account No. 8110-55I; of the West Virginia Board of Chiropractic Examiners, Account No. 8130-05I; of the West Virginia Board of Embalmers and Funeral Directors, Account No. 8131-10I; of the Depart-

ment of Finance and Administration-Revolving Fund, Account No. 8140-08I; of the Department of Finance and Administration-State Agency for Surplus Property, Account No. 8145-45I; of the Department of Finance and Administration-Information Systems Services Division, Account No. 8152-07I; of the Department of Finance and Administration-Transportation Division, Account No. 8157-07I; of the Department of Agriculture-Indirect Cost Funds, Account No. 8185-10I; of the Department of Agriculture-Rural Resources, Account No. 8190-13I; of the Department of Agriculture-Investment Account, Account No. 8194-16I; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-06I; of the Department of Agriculture-Small Watershed Program, Account No. 8195-09I; of the Department of Corrections-Prison Industries, Account No. 8222-05I; of the Regional Jail Authority, Account No. 8225-75I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-20I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-21; of the State Department of Education-Textbook Adoption, Account No. 8240-46I; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-07I; of the State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-08I; of the State Department of Education-Cedar Lakes, Account No. 8245-12I; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-08I; of the Department of Veterans Affairs-Veterans Home Improvement, Account No. 8260-11I; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-13I; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-05I; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-06I; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-07I; of the State Board of Insurance Premiums and Self Insured Losses, Account No. 8275-06I; of the State Board of Insurance-

Professional Liability Trust Fund, Account No. 8275-07I; of the State Board of Insurance-Mine Subsidence Insurance Fund, Account No. 8275-08I; of the Public Service Commission-Special Revenue Administration, Account No. 8280-08I; of the Public Service Commission-Gas Pipeline Division, Account No. 8285-08I; of the Public Service Commission-Motor Carrier Division, Account No. 8290-08I; of the Department of Natural Resources-Watter Smith State Park, Account No. 8320-11I; of the Department of Natural Resources-Investments, Account No. 8325-09I; of the Railroad Maintenance Authority-South Branch Valley Railroad, Account No. 8344-06I; of the Department of Public Safety-Purchase of Investments, Account No. 8350-12I; of the Department of Public Safety-Criminal Investigation, Account No. 8351-29I; of the Department of Public Safety-Purchase of Investments, Account No. 8352-12I; of the Department of Public Safety-Drunk Driving Prevention, Account No. 8355-10I; of the Department of Banking-Revolving Account, Account No. 8392-06I; of the Department of Banking-Purchase of Investments, Account No. 8395-08I; of the Secretary of State-Filing Fees, Account No. 8436-06I; of the State Health Department-Investments, Account No. 8500-30I; of the Blennerhassett Historical Park, Account No. 8554-06I; of the West Virginia Geological Survey-Publication Sales, Account No. 8590-10I; of WPBY-TV-Operating Account, Account No. 8595-05I; of the WPBY-TV-Grants-Even Fund Years, Account No. 8595-08I; of the WPBY-TV-Capital Expenditure, Account No. 8595-25I; of Grandview Educational TV-Operating Expense, Account No. 8596-06I; of the WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-16I; of WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-20I; of WSWP-TV-Capital Outlay, Account No. 8596-26I; of Educational Broadcasting Authority-Statewide Service, Account No. 8597-09I; of Educational Broadcasting Authority-Radio Network, Account No. 8597-10I; of Educational Broadcasting Authority-Radio Network, Account No. 8597-11I; of Educational Broadcasting Authority-WV Public Radio, Account No. 8597-14I; of Educational Broadcasting

Authority-Microwave Interconnect System, Account No. 8597-17I; of Educational Broadcasting Authority-Capital Outlay-Equipment, Account No. 8597-27I; of WNPB-TV-C.P.B.-A, Account No. 8598-23I; of WNPB-TV-C.P.B.-B, Account No. 8598-24I; of WNPB-TV-C.P.B.-B, Account No. 8598-28I; of the Department of Human Services-Child Abuse, Account No. 9155-36I; of the Economic and Community Development-Industrial Development Loan Fund, Account No. 9290-15I; of the Economic and Community Development-E.D.A.-Title IX Loan Fund, Account No. 9290-20I; of the State Building Commission-Parking Lot Operating, Account No. 9500-08I; of the State Building Commission-Operating Expense Capitol Complex, Account No. 9500-09I; of the State Building Commission-Cafeteria Operating Account, Account No. 9500-12I; of the State Building Commission-Bond Forfeiture, Account No. 9500-15I.

WHEREAS, The Governor, by executive order, has required accrued interest to remain in the interest accounts and not be transferable or distributable back to their respective primary accounts; and

WHEREAS, The Legislature has determined that accrued and accruing interest in certain designated interest accounts should be expired into the state fund, general revenue of the state for use for budgetary purposes from January 1, 1986, through the remainder of fiscal year 1985-86 and through the entire fiscal year of 1986-87; and with such interest being so expired monthly throughout such above periods from the interest accounts or from any principal account to which such interest moneys may have been distributed; therefore

Be it enacted by the Legislature of West Virginia:

That the accrued and accruing interest in the following designated interest accounts or as may be in the principal accounts thereof if required to be distributed back thereto, shall, from January 1, 1986, through June 30, 1987, be supplemented, amended, transferred and caused to expire from such accounts and back into the state fund, general revenue of the state, monthly, beginning not later than March 10, 1986, and continuing thereafter on or before the tenth day

of each calendar month through the remainder of fiscal year 1985-86 and through the entire fiscal year, subsequently, of 1986-87; the designated accounts: of the West Virginia Geological Survey, Account No. 7929-08I; of the Treasurer's Office-Abandoned and Unclaimed Property, Account No. 8000-12I; of the Treasurer's Office-Investment Pool, Account No. 8004-11I; of the Real Estate Commission, Account No. 8010-22I; of the Office of Economic and Community Development, Domestic Violence-Operations, Account No. 8026-22I; of the Office of Economic and Community Development, Domestic Violence-Administration, Account No. 8026-23I; of the Office of Economic and Community Development, Law-Enforcement Training-Operations, Account No. 8026-24I; of the Office of Economic and Community Development, Law-Enforcement Training-Administration, Account No. 8026-25I; of the Office of Economic and Community Development-Oil Overcharge Refunds, Account No. 8046-10I; of the Regional Jail and Prison Authority, Account No. 8050-06I; of the West Virginia Board of Examiners of Radiologic Technology, Account No. 8079-06I; of the State Tax Department-Chief Inspector, Account No. 8090-06I; of the State Tax Department-Federal Reimbursement, Account No. 8090-07I; of the State Tax Department-County Tax Fund, Account No. 8090-08I; of the Oil and Gas Conservation Commission-Annual Lease Tax, Account No. 8096-06I; of the West Virginia Board of Accountancy, Account No. 8100-05I; of the West Virginia Board of Dental Examiners, Account No. 8102-15I; of the West Virginia Board of Land Surveyors, Account No. 8103-20I; of the West Virginia Board of Pharmacy, Account No. 8105-30I; of the West Virginia Board of Examiners of Practical Nurses, Account No. 8106-35I; of the West Virginia Board of Registered Nurses, Account No. 8110-55I; of the West Virginia Board of Chiropractic Examiners, Account No. 8130-05I; of the West Virginia Board of Embalmers and Funeral Directors, Account No. 8131-10I; of the Department of Finance and Administration-Revolving Fund, Account No. 8140-08I; of the Department of Finance and Administration-State Agency for Surplus Property, Account No. 8145-45I; of the Department of Finance and Administration-Information Systems Services Division, Account No. 8152-07I; of the Department of Finance and Administration-Transportation Division, Account No. 8157-07I; of the Department of Agriculture-Indirect Cost

Funds, Account No. 8185-10I; of the Department of Agriculture-Rural Resources, Account No. 8190-13I; of the Department of Agriculture-Investment Account, Account No. 8194-16I; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-06I; of the Department of Agriculture-Small Watershed Program, Account No. 8195-09I; of the Department of Corrections-Prison Industries, Account No. 8222-05I; of the Regional Jail Authority, Account No. 8225-75I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-20I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-21; of the State Department of Education-Textbook Adoption, Account No. 8240-46I; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-07I; of the State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-08I; of the State Department of Education-Cedar Lakes, Account No. 8245-12I; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-08I; of the Department of Veterans Affairs-Veterans Home Improvement, Account No. 8260-11I; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-13I; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-05I; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-06I; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-07I; of the State Board of Insurance-Premiums and Self Insured Losses, Account No. 8275-06I; of the State Board of Insurance-Professional Liability Trust Fund, Account No. 8275-07I; of the State Board of Insurance-Mine Subsidence Insurance Fund, Account No. 8275-08I; of the Public Service Commission-Special Revenue Administration, Account No. 8280-08I; of the Public Service Commission-Gas Pipeline Division, Account No. 8285-08I; of the Public Service Commission-Motor Carrier Division, Account No. 8290-08I; of the Department of Natural Resources-Watter Smith State Park, Account No. 8320-11I; of the Department of Natural Resources-Investments, Account No. 8325-09I; of the Railroad Maintenance Authority-South Branch Valley Railroad, Account No. 8344-06I; of the Department of Public

Safety-Purchase of Investments, Account No. 8350-12I; of the Department of Public Safety-Criminal Investigation, Account No. 8351-29I; of the Department of Public Safety-Purchase of Investments, Account No. 8352-12I; of the Department of Public Safety-Drunk Driving Prevention, Account No. 8355-10I; of the Department of Banking-Revolving Account, Account No. 8392-06I; of the Department of Banking-Purchase of Investments, Account No. 8395-08I; of the Secretary of State-Filing Fees, Account No. 8436-06I; of the State Health Department Investments, Account No. 8500-30I; of the Blennerhassett Historical Park, Account No. 8554-06I; of the West Virginia Geological Survey-Publication Sales, Account No. 8590-10I; of WPBY-TV-Operating Account, Account No. 8595-05I; of the WPBY-TV-Grants-Even Fund Years, Account No. 8595-08I; of the WPBY-TV-Capital Expenditure, Account No. 8595-25I; of Grandview Educational TV-Operating Expense, Account No. 8596-06I; of the WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-16I; of WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-20I; of WSWP-TV-Capital Outlay, Account No. 8596-26I; of Educational Broadcasting Authority-State-wide Service, Account No. 8597-09I; of Educational Broadcasting Authority-Radio Network, Account No. 8597-10I; of Educational Broadcasting Authority-Radio Network, Account No. 8597-11I; of Educational Broadcasting Authority-WV Public Radio, Account No. 8597-14I; of Educational Broadcasting Authority-Microwave Interconnect System, Account No. 8597-17I; of Educational Broadcasting Authority-Capital Outlay-Equipment, Account No. 8597-27I; of WNPB-TV-C.P.B.-A, Account No. 8598-23I; of WNPB-TV-C.P.B.-B, Account No. 8598-24I; of WNPB-TV-C.P.B.-B, Account No. 8598-28I; of the Department of Human Services-Child Abuse, Account No. 9155-36I; of the Economic and Community Development-Industrial Development Loan Fund, Account No. 9290-15I; of the Economic and Community Development-E.D.A.-Title IX Loan Fund, Account No. 9290-20I; of the State Building Commission-Parking Lot Operating, Account No. 9500-08I; of the State Building Commission-Operating Expense Capitol Complex, Account No. 9500-09I; of the State Building Commission-Cafeteria Operating Account, Account No. 9500-12I; of the State Building Commission-Bond Forfeiture, Account No. 9500-15I.

CHAPTER 29

(Com. Sub. for H. B. 1082—By Mr. Speaker, Mr. Albright)

[Passed February 28, 1986; in effect from passage. Vetoed by the Governor. Amended and repassed March 4, 1986; in effect from passage. Approved by the Governor with language deletions.]

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

Be it enacted by the Legislature of West Virginia:

Title

1. General provisions.
2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.

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

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

1 **Sec. 2. Definitions.**—For the purpose of this act:
2 “Governor” shall mean the governor of the state of West
3 Virginia.

4 “Code” shall mean the code of West Virginia, one
5 thousand nine hundred thirty-one, as amended.

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

8 The “fiscal year one thousand nine hundred eighty-
9 seven” shall mean the period from July first, one
10 thousand nine hundred eighty-six through June thir-
11 tieth, one thousand nine hundred eighty-seven.

12 “From collections” shall mean that part of the total

13 appropriation which must be collected by the spending
14 unit to be available for expenditure. If the authorized
15 amount of collections is not collected, the total appropri-
16 ation for the spending unit shall be reduced automat-
17 ically by the amount of the deficiency in the collection.
18 If the amount collected exceeds the amount designated
19 "from collections", the excess shall be set aside in a
20 special surplus fund and may be expended for the
21 purpose of the spending unit as provided by chapter
22 five-a, article two of the code.

1 **Sec. 3. Classification of appropriations.**—An ap-
2 propriation for:

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

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

13 Unless otherwise specified, appropriations for per-
14 sonal services shall include salaries of heads of spending
15 units.

16 "Annual increment" shall mean funds appropriated
17 for "eligible employees" and shall be disbursed only in
18 accordance with chapter five, article five of the code.

19 Funds appropriated for "annual increment" shall be
20 transferred to "personal services" or other designated
21 items only as required.

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

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

28 "Repairs and alterations" shall mean routine mainte-

29 nance and repairs to structures and minor improve-
30 ments to property which do not increase the capital
31 assets.

32 “Buildings” shall include new construction and major
33 alteration of existing structures and the improvement of
34 lands and shall include shelter, support, storage,
35 protection or the improvement of a natural condition.

36 “Lands” shall mean the purchase of real property or
37 interest in real property.

38 “Capital outlay” shall mean and include buildings,
39 lands, or buildings and lands, with such category or
40 item of appropriation to remain in effect as provided by
41 chapter twelve, article three, section twelve of the code.

42 Appropriations classified in any of the above catego-
43 ries shall be expended only for the purposes as defined
44 above and only for the spending units herein designated.

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

1 **Sec. 4. Method of expenditure.**—Money approp-
2 riated by this act, unless otherwise specifically directed,
3 shall be appropriated and expended according to the
4 provisions of chapter twelve, article three of the code,
5 or according to any law detailing a procedure
6 specifically limiting that article.

1 **Sec. 5. Maximum expenditures.**—No authority or
2 requirement of law shall be interpreted as requiring or
3 permitting an expenditure in excess of the appropria-
4 tions set out in this act.

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§16. Appropriations for local governments.

§17. Total appropriations.

§18. General school fund.

1 **Section 1. Appropriations from general re-**
2 **venue.**—From the state fund general revenue, there are
3 hereby appropriated conditionally upon the fulfillment
4 of the provisions set forth in chapter five-a, article two
5 of the code, the following amounts, as itemized for
6 expenditure during the fiscal year one thousand nine
7 hundred eighty-seven.

1 **Sec. 2. Appropriations of federal funds.**—In
2 accordance with chapter four, article eleven, federal
3 funds are hereby appropriated conditionally upon the
4 fulfillment of the provisions set forth in chapter five-a,
5 article two of the code, the following amounts, as
6 itemized for expenditure during the fiscal year one

7 thousand nine hundred eighty-seven.

8 Any unexpended balances remaining for federal funds
9 at the close of the fiscal year 1985-86, are hereby
10 reappropriated for expenditure during the fiscal year
11 1986-87.

LEGISLATIVE

1—*Senate*

Acct. No. 1010

	Federal Fund Fiscal Year 1986-87	General Revenue Fund Fiscal Year 1986-87
1 Compensation of Members ... \$	—	\$ 275,000*
2 Compensation and Per		
3 Diem of Officers		
and Employees	—	992,500
4 Expenses of Members	—	175,000
5 Repairs and Alterations	—	50,000
6 Current Expenses and		
7 Contingent Fund	—	447,500
8 Computer Supplies	—	25,000
9 Computer Systems	—	262,000
10 Printing Blue Book	—	185,000
12 Total	\$ —	\$ 2,412,000

* Includes basic salary of legislators at \$6,500 per annum

13 The distribution of the blue book shall be by the office
14 of the clerk of the senate and shall include seventy-five
15 copies for each member of the legislature and two copies
16 to each classified and approved high and junior high
17 school and one to each elementary school within the
18 state.

19 The appropriations for the senate for the fiscal year
20 1985-86 are to remain in full force and effect, and are
21 hereby reappropriated to June 30, 1987.

22 Any balances so reappropriated may be transferred
23 and credited to the 1986-87 accounts.

24 Upon written request of the clerk of the senate, the
25 state auditor shall transfer amounts between items of
26 the total appropriation in order to protect or increase
27 the efficiency of the service.

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

40 The clerk of the senate, with written approval of the
41 president, or the president of the senate shall have
42 authority to employ such staff personnel during any
43 session of the legislature as shall be needed in addition
44 to staff personnel authorized by the senate resolution
45 adopted during any such session. The clerk of the senate
46 with written approval of the president or the president
47 of the senate shall have authority to employ such staff
48 personnel between sessions of the legislature as shall be
49 needed, the compensation of all staff personnel during
50 and between sessions of the legislature, notwithstanding
51 any such senate resolution, to be fixed by the president
52 of the senate. The clerk is hereby authorized to draw his
53 requisitions for the payment of all such staff personnel
54 upon the auditor, payable out of the appropriation for
55 Compensation and Per Diem of Officers and Employees
56 or Current Expenses and Contingent Fund of the senate
57 for such services.

58 For duties imposed by law and the senate, the clerk
59 of the senate shall be paid a monthly salary as provided
60 in senate resolution adopted January 1986, and payable
61 out of the amount appropriated for Compensation and

62 Per Diem of Officers and Employees.

2—*House of Delegates*

Acct. No. 1020

1	Compensation of Members ...	\$	—	\$	650,000*
2	Compensation and				
3	Per Diem of Officers				
	and Employees		—		346,000
4	Expenses of Members		—		529,000
5	Current Expenses and				
6	Contingent Fund		—		975,000
8	Total	\$	—	\$	2,500,000

* Includes basic salary of legislators at \$6,500 per annum

9 The appropriations for the house of delegates for the
10 fiscal year 1985-86 are to remain in full force and effect,
11 and are hereby reappropriated to June 30, 1987.

12 Any balances so reappropriated may be transferred
13 and credited to the 1986-87 accounts.

14 Upon the written request of the clerk of the house of
15 delegates, the auditor shall transfer amounts between
16 items of the total appropriation in order to protect or
17 increase the efficiency of the service.

18 The clerk of the house of delegates, with the approval
19 of the speaker, is authorized to draw his requisition
20 upon the auditor, payable out of the Current Expenses
21 and Contingent Fund of the house of delegates, for any
22 bills for supplies and services that may have been
23 incurred by the house of delegates, and not included in
24 the appropriation bill for bills, for services and supplies
25 incurred in preparation for the opening of the session
26 and after adjournment, and for the necessary operation
27 of the house of delegates offices, the requisition for the
28 same to be accompanied by bills to be filed with the
29 auditor.

30 The speaker of the house of delegates, upon approval
31 of the house committee on rules, shall have authority to
32 employ such staff personnel during and between
33 sessions of the legislature as shall be needed, in addition

34 to personnel designated in the house resolution, and the
 35 compensation of all personnel shall be as fixed in such
 36 house resolution, for the session, or fixed by the speaker,
 37 with the approval of the house committee on rules,
 38 during and between sessions of the legislature, notwith-
 39 standing such house resolution. The clerk of the house
 40 is hereby authorized to draw requisitions upon the
 41 auditor, payable from the Compensation and Per Diem
 42 of Officers and Employees Fund or the Current Ex-
 43 penses and Contingent Fund of the house of delegates
 44 for such service.

45 For duties imposed by law and by the house of
 46 delegates, including salary allowed by law as keeper of
 47 the rolls, the clerk of the house of delegates shall be paid
 48 a monthly salary as provided in the house resolution,
 49 unless increased between sessions under the authority of
 50 the speaker, with approval of the house committee on
 51 rules, and payable from the Compensation and Per
 52 Diem of Officers and Employees item or the Current
 53 Expenses and Contingent Fund item of the house of
 54 delegates.

3—*Joint Expenses*

Acct. No. 1030

(WV Code Chapter 4)

1	Joint Committee on		
2	Government and Finance ..	\$ —	\$ 5,270,399
3	To Pay Cost of		
	Legislative Printing	—	970,000
4	Rule Making		
	Review Committee	—	114,150
5	Commission on Inter-		
	state Cooperation	—	5,000
7	National Conference		
8	of State Legislatures	—	43,010
9	Education Commission		
	of the States	—	28,500
10	Association of State		
11	Auditors, Comptrollers		
	and Treasurers	—	1,800

12	Council of State Govern-		
13	ments' Governmental		
14	Accounting Standards		
	Board	—	10,000
16	Total	\$ —	\$ 6,442,859

17 The appropriations for Joint Expenses for the fiscal
 18 year 1985-86 are to remain in full force and effect and
 19 are hereby reappropriated to June 30, 1987. Any
 20 balances so reappropriated may be transferred and
 21 credited to the 1986-87 accounts.

22 Upon written request of the clerk of the senate, with
 23 the approval of the president of the senate, and the clerk
 24 of the house of delegates, with the approval of the
 25 speaker of the house of delegates, and a copy to the
 26 legislative auditor, the state auditor shall transfer
 27 amounts between items of the total appropriation in
 28 order to protect or increase the efficiency of the service.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1	Personal Services	\$ —	\$16,592,040*
2	Annual Increment.....	—	143,312
3	Other Expenses	30,000	2,542,058
4	Judges' Retirement		
5	System	—	1,119,048
6	Other Court Costs	—	2,011,700
7	Judicial Training		
8	Program.....	—	250,000
9	Mental Hygiene Fund	—	320,000
10	Total	\$ 30,000	\$ 22,978,158

* Includes salaries of supreme court justices at \$55,000 per annum

11 This appropriation shall be administered by the
 12 administrative director of the state supreme court of
 13 appeals who shall draw his requisitions for warrants in
 14 payment in the form of payrolls, making deductions
 15 therefrom, as required by law, for taxes and other items.

16 The appropriation for Judges' Retirement System is
 17 to be transferred to the judges' retirement fund, in
 18 accordance with the law relating thereto upon requisition
 19 of the administrative director of the state supreme
 20 court of appeals.

21 Any unexpended balance remaining in this appropriation
 22 at the close of the fiscal year 1985-86 is hereby
 23 reappropriated for expenditure during the fiscal year
 24 1986-87.

25 Any balances so reappropriated may be transferred
 26 and credited to the 1986-87 accounts.

EXECUTIVE

5—*Governor's Office*

(WV Code Chapter 5)

Acct. No. 1200

1	Salary of Governor	\$	—	\$	72,000
2	Other Personal Services		—		1,031,429
3	Annual Increment.....		—		7,200
4	Current Expenses		—		359,659
5	Equipment		—		4,340
7	Total	\$	—	\$	1,474,628

6—*Office of Community and
Industrial Development*

(WV Code Chapter 5B)

Acct. No. 1210

1	Personal Services	\$	564,174	\$	1,720,587
2	Annual Increment.....		5,524		23,186
3	Current Expenses		856,484		969,609
4	Equipment		28,350		16,500
5	The Economic Develop-				
6	ment Loan Fund		—		3,000,000
7	W. Va. Automobile				
8	Assistance Corporation		—		50,000
9	Regional Council		—		220,000
10	W. Va. Jobs Develop-				
11	ment Corporation		—		50,000

12	A.R.C. Assessment	—	191,844
13	W. Va. Public Energy		
14	Authority	—	130,000
15	Partnership Grants	—	3,777,873
16	Fire Departments	—	500,000
17	Civil Air Patrol	—	89,000
18	Aeronautics Commission—		
19	Airport Matching	—	300,000
20	Emergency Assistance.....	—	100,000
21	National Youth		
	Science Camp	—	100,000
22	To Local Entities	9,821,072	—
23	Transfer to State		
	Spending Units	1,042,182	—
24	International Trade		
	Offices	—	1,000,000
25	West Virginia		
	Export Authority	—	100,000
26	Institute for Trade		
27	Development-		
	Marshall University	—	50,000
28	Center for Economic		
	Analysis and		
29	Statistics-WVU	—	50,000
31	Total	\$12,317,786	\$ 12,438,599

32 Any unexpended balance remaining in the appropri-
 33 ation for Federal/State Coordination (account no. 1210-
 34 06), Community Water Development and Partnership
 35 Grants (account no. 1210-11), Partnership Grants
 36 (account no. 1210-15), Fire Departments (account no.
 37 1210-16), Coal Development (account no. 1210-17),
 38 Emergency Assistance (account no. 1210-18), Flood
 39 (account no. 1210-19), and Aeronautics Commission-
 40 Airport Matching (account no. 1210-23) at the close of
 41 the fiscal year 1985-86 is hereby reappropriated for
 42 expenditure during the fiscal year 1986-87.

*7—Office of Community and Industrial
 Development Emergency Employment,
 Training and Education*

(WV Code Chapter 5)

Acct. No. 1220

1 Any unexpended balance remaining in the appropri-
 2 ation Emergency Jobs Program-Public Service Jobs,
 3 (account no. 1220-04), Emergency Jobs Program-Public
 4 Service Jobs, (account no. 1220-05), and Emergency Jobs
 5 Program-Parks, (account no. 1220-07), at the close of the
 6 fiscal year 1985-86 is hereby reappropriated for expen-
 7 diture during fiscal year 1986-87.

8—*Governor's Office—Custodial Fund*

(WV Code Chapter 5)

Acct. No. 1230

1 Unclassified—Total\$ — \$ 340,690

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

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

(WV Code Chapter 5)

Acct. No. 1240

1 Unclassified—Total\$ — \$ 1,000,000

2 From this appropriation there may be expended, at
 3 the discretion of the governor, an amount not to exceed
 4 \$1,000 as West Virginia's contribution to the Interstate
 5 Oil Compact Commission.

6 Any unexpended balance remaining in the appropri-
 7 ations (account no. 1240-06) and (account no. 1240-20) at
 8 the close of the fiscal year 1985-86 is hereby reapprop-
 9 riated for expenditure during the fiscal year 1986-87.

10—*Governor's Office—Flood Relief—
 Federal Declared Disaster*

Acct. No. 1260

- 1 Unclassified—Total \$ — \$ 2,000,000
- 2 The purpose of this appropriation is for use upon
- 3 notification of federally declared disaster.

11—*Office of Emergency Services*

(WV Code Chapter 15)

Acct. No. 1300

1	Personal Services	\$ 91,839	\$ 272,283*
2	Annual Increment.....	540	6,768
3	Current Expenses	87,034	39,805
4	Repairs and Alterations	12,500	5,500
5	Equipment	—	—
6	To Local Entities	452,500	—
7	Transfer to State		
8	Spending Units	155,000	—
10	Total	\$ 799,413	\$ 324,356

*Includes salary of the director at \$30,500 per annum

FISCAL

12—*Auditor's Office—General Administration*

(WV Code Chapter 12)

Acct. No. 1500

1	Salary of State Auditor	\$ —	\$ 46,800
2	Other Personal Services	—	1,601,728
3	Annual Increment.....	—	26,064
4	Current Expenses	—	668,199
5	Equipment	—	55,650
6	Microfilm.....	—	20,000
8	Total	\$ —	\$ 2,418,441

13—*Auditor's Office—Social Security*

(WV Code Chapter 12)

Acct. No. 1510

- 1 To Match Contri-
- 2 butions of State
- Employees for

Social Security

3 Total \$ — \$ 20,188,846

4 The above appropriation is intended to cover the
 5 state's share of social security costs for those spending
 6 units operating from the general revenue fund. The
 7 state department of highways, department of motor
 8 vehicles, workers' compensation commissioner, public
 9 service commission, and other departments operating
 10 from special revenue funds and/or federal funds shall
 11 pay their proportionate share of the social security cost
 12 for their respective divisions.

13 Any unexpended balance remaining in the appropri-
 14 ation for Auditor's Office—Social Security (account no.
 15 1510-06) at the close of the fiscal year 1985-86 is hereby
 16 reappropriated for expenditure during the fiscal year
 17 1986-87.

14—*Auditor's Office—*
Unemployment Compensation

(WV Code Chapter 12)

Acct. No. 1520

1 Unclassified—Total \$ — \$ 500,000

2 The above appropriation is intended to cover the
 3 state's share of unemployment compensation costs for
 4 those spending units operating from the general revenue
 5 fund. The state department of highways, department of
 6 motor vehicles, workers' compensation commissioner,
 7 and other departments operating from special revenue
 8 funds and/or federal funds shall pay their proportionate
 9 share of the unemployment compensation cost for their
 10 respective divisions.

11 Should this appropriation be insufficient to meet the
 12 requirements of state spending units operating from the
 13 general revenue fund, any excess costs shall be a proper
 14 charge against the units and each spending unit shall
 15 reimburse to the Auditor's Office—Unemployment
 16 Compensation any amounts required for that depart-
 17 ment for costs in excess of this appropriation.

15—*Treasurer's Office*

(WV Code Chapter 12)

Acct. No. 1600

1	Salary of			
	State Treasurer	\$	—	\$ 50,400
2	Other Personal Services		—	782,478
3	Annual Increment		—	5,904
4	Current Expenses		—	295,165
5	Equipment		—	30,000
6	Microfilm Program		—	10,000
8	Total	\$	—	\$ 1,173,947

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

(WV Code Chapter 12)

Acct. No. 1650

1	Total	\$	—	\$ 14,691,500
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2 Any unexpended balance remaining in the appropri-
3 ation for Treasurer's Office—School Building Sinking
4 Fund (account no. 1650-06) at the close of the fiscal year
5 1985-86 is hereby reappropriated for expenditure
6 during the fiscal year 1986-87.

17—*Municipal Bond Commission*

(WV Code Chapter 13)

Acct. No. 1700

1	Personal Services	\$	—	\$ 88,476
2	Annual Increment		—	1,080
3	Current Expenses		—	32,827
4	Equipment		—	1,000
6	Total	\$	—	\$ 123,383

18—*State Tax Department*

(WV Code Chapter 11)

Acct. No. 1800

1	Personal Services	\$	—	\$ 10,073,024*
2	Annual Increment.....		—	161,568
3	Current Expenses		—	5,920,369
4	Repairs and Alterations		—	23,000
5	Equipment		—	147,806
6	Circuit Breaker			
	Reimbursement		—	10,000
7	Property Reappraisal			
	Program.....		—	1,500,000
8	Reimbursement to			
9	Twenty-nine Counties			
10	for Loss of Tax Revenue			
	Due to 1985 Flood		—	800,000
12	Total	\$	—	\$ 18,635,767

* Includes salary of the commissioner at \$47,500 per annum

13 Any unexpended balance remaining in the appropri-
 14 ation for Other Expenses (account no. 1800-07) and
 15 Property Reappraisal Program (account no. 1800-09) at
 16 the close of the fiscal year 1985-86 is hereby reappropri-
 17 ated for expenditure during the fiscal year 1986-87.

19—*Department of Finance
 and Administration*

(WV Code Chapter 5A)

Acct. No. 2100

1	Personal Services	\$	132,526	\$	2,766,174*
2	Annual Increment.....		1,116		45,144
3	Current Expenses		1,368,003		869,000
4	Repairs and Alterations		1,000		252,500
5	Equipment		590,000		42,800
6	Postage		—		1,800,000
7	Utilities		—		600,000
8	Public Transportation		—		410,000
9	Fire Service Fee		—		39,000
10	Building Equipment				
	and Supplies		—		12,200
11	Southern Regional				

	Educational Board	—	80,000
12	Council of State		
	Governments	—	42,600
13	National Governor's		
	Association	—	48,200
14	Southern States		
	Energy Board	—	19,400
16	Total	\$ 2,092,645	\$ 7,027,018

* Includes salary of the commissioner at \$45,500 per annum

17 The workers' compensation commissioner, department
 18 of human services, public service commission, depart-
 19 ment of natural resources, department of motor vehicles,
 20 state department of highways, state health department
 21 and state tax department—accounting division for
 22 income tax purposes shall reimburse the postage
 23 appropriation of the department of finance and admin-
 24 istration monthly for all meter service. Any spending
 25 unit operating from special revenue or receiving
 26 reimbursement for postage costs from the federal
 27 government shall refund to the postage account of the
 28 department of finance and administration such
 29 amounts. Should this appropriation for postage be
 30 insufficient to meet the mailing requirements of the
 31 state spending units as set out above, any excess postage
 32 meter service requirements shall be a proper charge
 33 against the units, and each spending unit shall refund
 34 to the Postage appropriation of the department of
 35 finance and administration any amounts required for
 36 the department for postage in excess of this
 37 appropriation.

38 Any unexpended balance remaining in the postage
 39 account (account no. 2100-06) at the close of the fiscal
 40 year 1985-86 is hereby reappropriated for expenditure
 41 during the fiscal year 1986-87.

42 The state department of highways shall reimburse the
 43 appropriation of the department of finance and admin-
 44 istration monthly for all actual expenses incurred
 45 pursuant to the provisions of chapter seventeen, article
 46 two-a, section thirteen of the code.

47 Any unexpended balance remaining in the appropri-

48 ation Retrofit Governor's Elevator at the close of the
 49 fiscal year 1985-86 is hereby reappropriated and
 50 redesignated to Retrofit Elevator in Attorney General's
 51 section.

20—*State Board of Insurance*

(WV Code Chapter 29)

Acct. No. 2250

1	Personal Services	\$	—	\$	96,116
2	Annual Increment.....		—		720
3	Current Expenses		—		36,218
4	Equipment		—		3,000
5	Premiums, Claims				
6	and Other				
	Expenses		—		6,000,000
8	Total	\$	—	\$	6,136,054

9 The above appropriation on lines 5 and 6 is for
 10 purpose of paying premiums, self-insurance losses, loss
 11 adjustment expenses and loss prevention engineering
 12 fees for property, casualty and fidelity insurance for the
 13 various state agencies. Should this appropriation be
 14 insufficient to meet the requirements of the state
 15 spending units, any excess costs shall be a proper charge
 16 against the units and each spending unit shall reim-
 17 burse to the board of insurance any amounts required
 18 for that department for costs in excess of this
 19 appropriation.

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

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

LEGAL

21—*Attorney General*

(WV Code Chapters 5, 14, 46 and 47)

Acct. No. 2400

1	Salary of At-			
	torney General	\$	—	\$ 50,400
2	Other Personal			
	Services		—	2,440,504
3	Annual Increment.....		—	18,612
4	Current Expenses		—	561,055
5	Equipment		—	72,255
6	Publication of Reports			
7	and Opinions.....		—	20,000
8	To Protect the			
9	Resources or Tax			
10	Structure of the			
11	State in Controversies			
	or Legal Proceedings			
	Affecting Same		—	3,250
13	Total	\$	—	\$ 3,166,076

14 Any unexpended balance remaining in the appropri-
 15 ation for Publication of Reports and Opinions (account
 16 no. 2400-05) at the close of the fiscal year 1985-86 is
 17 hereby reappropriated for expenditure during the fiscal
 18 year 1986-87.

22—*Commission on Uniform State Laws*

(WV Code Chapter 29)

Acct. No. 2450

1	Unclassified—Total	\$	—	\$ 13,000
2	To pay expenses of members of the commission on			
3	uniform state laws.			

INCORPORATING AND RECORDING

23—*Secretary of State*

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

1	Salary of Secretary of State	\$	—	\$	43,200
2	Other Personal Services		—		569,032
3	Annual Increment.....		—		3,168
4	Current Expenses		—		205,881
5	Equipment		—		36,575
6	Publication of State Register.....		—		—0—
7	Annual Increment.....		—		—0—
8	Election Training Presentation		—		—0—
10	Total	\$	—	\$	857,856

EDUCATIONAL

24—West Virginia Board of Regents (Control)

(WV Code Chapter 18)

Acct. No. 2790

1	Personal Services ..	\$	—		\$130,574,954
2	Annual Increment		—		1,108,000
3	Current Expenses		—		23,916,275
4	Repairs and Alterations		—		1,309,000
5	Equipment		—		1,124,000
6	Bureau of Coal Research ...		—		1,205,000
7	National Research Center for Coal and Energy		—		1,600,000
9	Doctoral Research—W.V.U.		—		25,000
10	Agriculture and Forestry Experiment Station-W.V.U. ...		—		2,305,657
12	Personal Services		—	1,924,782	

94	APPROPRIATIONS	[Ch. 29
13	Current	
	Expenses	— 380,875
14	Jackson's Mill	
	State 4-H Camp	— 125,000
15	Center for	
	Economic	
	Development	— 100,000
16	Less: Authorized	
	Expenditure	
17	from Earned	
	Interest	— —0—
19	Total \$	— <u> </u> <u>\$163,392,886</u>

20 *
21
22
23
24

25 Out of the above appropriation for current expenses,
26 \$100,000 shall be used in accordance with article
27 twenty-two-a, chapter eighteen of the code.

25—*West Virginia Board of Regents*

(WV Code Chapter 18)

Acct. No. 2800

1	Personal Services	\$ —	\$ 820,275
2	Annual Increment	—	10,000
3	Current Expenses	—	379,318
4	Equipment	—	7,000
5	Higher Education		
	Grant Program	—	3,500,000
6	Tuition Contract		
	Programs	—	710,000
8	Total \$	—	\$ <u>5,426,593</u>

26—*West Virginia College of
Osteopathic Medicine*

* Clerk's Note: The Governor deleted all language appearing on lines twenty through twenty-four, Acct. No. 2790.

(WV Code Chapter 18)

Acct. No. 2810

1	Personal Services	\$	—	\$	2,903,350
2	Annual Increment		—		18,000
3	Current Expenses		—		1,120,544
4	Repairs and Alterations		—		45,000
5	Equipment		—		65,000
6	Primary Health Training		—		260,000
8	Total	\$	—	\$	4,411,894

27—Marshall University—Medical School

(WV Code Chapter 18)

Acct. No. 2840

1	Personal Services	\$	—	\$	5,148,150
2	Annual Increment		—		17,000
3	Current Expenses		—		1,102,774
4	Repairs and Alterations		—		50,000
5	Equipment		—		100,000
7	Total	\$	—	\$	6,417,924

*28—West Virginia University—
Medical School*

(WV Code Chapter 18)

Acct. No. 2850

1	Personal Services	\$	—	\$	18,069,941
2	Annual Increment		—		121,000
3	Current Expenses		—		6,267,726
4	Repairs and Alterations		—		300,000
5	Equipment		—		375,000
6	Family Practice				
7	Residency Support		—		458,000
8	Community Hospital				
9	Residency Support		—		945,000
10	Cancer Research Center		—		2,000,000
12	Total	\$	—	\$	28,536,667

- 13 May be transferred to West Virginia University -
 14 medical school fund upon requisition of the governor.

29—*State Department of Education*

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1	Personal Services .. \$	—	\$ 2,286,340
2	Annual Increment	—	39,343
3	Current Expenses	6,600	1,219,077
4	Repairs and Alterations	—	1,100
5	Equipment	—	22,400
6	Statewide Testing Program	—	1,128,288
	Personal Services	—	213,595
	Annual Increment...	—	1,764
	Other Expenses....	—	598,411
	Equipment....	—	14,500
	Professional Competency Testing	—	300,018
7	Aid to Children's Home	—	50,000
8	Child Development Program	—	576,592
9	Tuition Waiver	—	162,216
10	Microcomputer Network Program	—	200,000
12	Total.....	\$ 6,600	\$ 5,685,356

- 13 The above appropriation includes the state board of
 14 education and their executive office.

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

(WV Code Chapters 18 and 18A)

Acct. No. 2870

1	Personal Services	\$ 487,394	\$ 177,660
2	Annual Increment.....	8,136	3,528
3	Current Expenses	778,371	17,616
4	Repairs and Alterations	1,700	—
5	Equipment	8,000	—
6	Aid to Counties—Includes		
7	Hot Lunches and Canning		
8	for Hot Lunches	—	1,950,000
9	To Local Entities	40,107,860	—
11	Total	\$ 41,391,461	\$ 2,148,804

31—*State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1	Personal Services	\$ 941,067	\$ 689,012
2	Annual Increment.....	12,980	13,788
3	Current Expenses	790,619	137,177
4	Repairs and Alterations	17,603	—
5	Equipment	44,451	4,000
6	Vocational Aid	—	9,684,945
7	Adult Basic Education.....	—	1,282,400
8	Start Up Funds and		
9	Equipment for		
	New and Existing		
	Facilities	—	1,825,000
10	New and Expanding		
	Industries.....	—	176,562
11	To Local Entities	7,423,357	—
12	Capital Outlay		
	(Construction).....	—	1,623,000
13	Buildings	1,230	—
15	Total	\$ 9,231,307	\$ 15,435,884

16 Any unexpended balance remaining in the appropri-
 17 ation for New and Expanding Industries (account no.
 18 2890-18) and Capital Outlay (account no. 2890-20) at the

19 close of the fiscal year 1985-86 is hereby reappropriated
20 for expenditure during the fiscal year 1986-87.

32—*Educational Broadcasting Authority*

(WV Code Chapter 10)

Acct. No. 2910

1	Personal Services	\$	—	\$	94,090
2	Annual Increment		—		576
3	Current Expenses		90,000		40,550
4	Repairs and Alterations		20,000		—
5	Equipment		2,000,530		15,000
6	Regional ETV and Radio		—		4,651,956
7	Annual Increment		—		31,666
8	Capital Outlay—Equipment		—		269,409
10	Total	\$	2,110,530	\$	5,103,247

11 Regional ETV and Radio is for the construction and
12 operation of regional ETV and radio stations.

13 Funds appropriated for Regional ETV and Radio may
14 be transferred to special revenue accounts for matching
15 college, university, city, county, federal and /or other
16 generated revenue.

17 Funds appropriated under line 7 for Annual Incre-
18 ment shall be transferred to line 6, Regional ETV and
19 Radio, only as required.

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

(WV Code Chapters 18 and 18A)

Acct. No. 2920

1	Salary Equalization—Total ..	\$	—	\$	—0—
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34—*State Department of Education—
State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2930

1	Professional Educators	\$	—	\$	—0—
2	Service Personnel		—		—0—
3	Fixed Charges		—		—0—
4	Total	\$	—	\$	—0—

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

(WV Code Chapters 18 and 18A)

Acct. No. 2950

1	Professional Educators	\$	—	\$482,042,213
2	Service Personnel		—	173,926,230
3	Fixed Charges		—	70,582,205
4	Transportation		—	26,118,186
5	Administration		—	4,579,116
6	Other Current Expenses		—	42,637,949
7	Improve Instructional			
8	Programs		—	28,144,279
9	Basic Foundation			
	Allowances		—	\$828,030,178
10	Less Local Share		—	(104,672,453)
12	Total Basic			
	State Aid		—	\$723,357,725
13	Loss Reduction		—	899,814
14	Professional Educators		—	630,840
15	Service Personnel		—	1,221,477
16	Increased Enrollment		—	200,000
18	Total	\$	—	\$726,309,856

36—*State Department of Education—
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1	Personal			
	Services	\$	490,606	\$ 343,655
2	Annual			
	Increment ...		3,762	3,762

100	APPROPRIATIONS	[Ch. 29
3	Current	
	Expenses	895,816 226,020
4	Equipment	28,308 16,022
5	Repairs and	
	Alterations ..	500 —
6	Out-of-State	
	Instruction ..	— 428,000
7	Aid to	
	Counties	513,750 7,594,920
	County	
	Grant	
	Awards	— 6,054,303
	Special	
	State	
	Projects ...	— 209,397
	Medley	
	Education	
	Program ..	513,750 — 1,253,242
	Summer	
	Camp for	
	Gifted	
	Children	— 77,978
8	To Local	
	Entities	21,220,817 —
9	Preschool	
	Handicapped	
10	Fund	— 1,000,000
12	Total	\$23,153,559 \$9,612,379

13 The appropriation for Out-of-State Instruction may be
14 expended to provide instruction, care and maintenance
15 for educable persons who are severely handicapped and
16 for whom the state provides no facilities.

17 The appropriation for Aid to Counties may be
18 expended by county boards of education for the initia-
19 tion, and/or improvements of special education pro-
20 grams including employment of new special professional
21 education personnel solely serving exceptional children;
22 training of educational personnel to work with excep-
23 tional children; and supportive costs such as materials,
24 transportation, contracted services, minor renovation

25 and other costs directly related to the special education
 26 delivery process prescribed by the state board of
 27 education. The appropriation may also be used for non-
 28 personnel costs associated with the maintenance of
 29 special education programs.

30 The appropriation for Special State Projects may be
 31 expended to support (1) an instructional materials
 32 center for visually handicapped children at the West
 33 Virginia Schools for the deaf and the blind, (2) the state
 34 special olympics program, (3) the West Virginia
 35 advisory council for the education of exceptional
 36 children at the West Virginia college of graduate
 37 studies, and (4) the state-wide training activities or other
 38 programs benefiting exceptional children.

37—*Teachers' Retirement Board*

(WV Code Chapter 18)

Acct. No. 2980

1	Teachers' Retirement Fund .. \$	—	\$ 18,810,387
2	Supplemental Benefits for		
3	Annuitants.....	—	6,400,000
5	Total	\$ —	\$ 25,210,387

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

(WV Code Chapters 18 and 18A)

Acct. No. 3330

1	Personal Services	\$ —	\$ 3,930,943
2	Annual Increment.....	—	5,328
3	Current Expenses	—	898,800
4	Repairs and Alterations	—	396,200
5	Equipment	—	223,100
7	Total	\$ —	\$ 5,454,371

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

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1	Personal Services	\$	—	\$	149,839
2	Annual Increment.....		—		2,854
3	Current Expenses		—		93,396
4	Repairs and Alterations		—		19,000
5	Equipment		—		5,250
7	Total	\$	—	\$	270,339

40—*West Virginia Library Commission*

(WV Code Chapter 10)

Acct. No. 3500

1	Personal Services	\$	99,700	\$	1,096,857
2	Annual Increment.....		1,476		23,140
3	Current Expenses		129,378		220,500
4	Repairs and Alterations		5,000		4,100
5	Equipment		50,000		10,000
6	Per-Capita Grants		—		6,012,964
7	Library Matching Fund (Construction).....		230,000		397,800
8	Books, Periodicals and Films.....		—		250,000
9	To Local Entities		612,548		—
11	Total	\$	1,128,102	\$	8,015,361

12 Any unexpended balance remaining in the appropri-
 13 ation for Library Matching Fund (Construction) (ac-
 14 count no. 3500-10) at the close of the fiscal year 1985-
 15 86 is hereby reappropriated for expenditure during the
 16 fiscal year 1986-87.

41—*Department of Culture and History*

(WV Code Chapter 29)

Acct. No. 3510

1	Personal Services ..\$	197,797	\$	1,340,870*
2	Annual Increment	972		15,606
3	Current Expenses	134,169		288,500
4	Repairs and			

	Alterations	—		30,100
5	Equipment	5,000		51,900
6	Arts and			
7	Humanities Fund-			
8	Grants and			
	Contractual			
	Services	422,900		677,250
9	Department			
10	Programming			
	Funds	—		680,400
	Outreach and			
	Education	—	92,570	
	Technical			
	Assistance	—	92,830	
	Culture Center			
	Programs	—	495,000	
11	Historical			
	Preservation	100,000		150,751
12	Washington			
	Carver Camp ...	—		148,314
13	Grants, Fairs			
	and Festivals	—		824,000
14	Independence Hall	—		125,000
16	Total	\$ 860,838		\$ 4,332,691

* Includes salary of the commissioner at \$36,500 per annum

18 The above appropriations for Arts and Humanities
 19 Fund (account no. 3515-00, 01, 05), Department Pro-
 20 gramming Funds (account no. 3520-06, 07, 08), Grants,
 21 Fairs and Festivals (account no. 3510-04), and Washing-
 22 ton Carver Camp (account no. 3510-05) shall be ex-
 23 pended only upon authorization of the department of
 24 culture and history and in accordance with the provi-
 25 sions of chapter five-a and chapter twelve, article three
 26 of the code.

27 All federal moneys received as reimbursement to the
 28 department of culture and history for moneys expended
 29 from the general revenue fund for Arts and Humanities
 30 and Historical Preservation are hereby reappropriated
 31 for the purposes as originally made, including personal
 32 services, current expenses and equipment.

33 Any unexpended balance remaining in the appropri-
 34 ation Washington Carver Camp (account no. 3510-05) at
 35 close of the fiscal year 1985-86 is hereby reappropriated
 36 for expenditure during the fiscal year 1986-87.

CORRECTIONS

42—*Probation and Parole Board*

(WV Code Chapter 62)

Acct. No. 3650

1	Salaries of Members of Board			
2	of Probation and Parole \$	—	\$	81,000*
3	Other Personal Services	—		54,152
4	Annual Increment	—		972
5	Current Expenses	—		23,874
6	Repairs and Alterations	—		300
7	Equipment	—		1,000
9	Total \$	—	\$	161,298

*Three members at \$27,000 per annum each

43—*Department of Corrections—
Central Office*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

1	Personal Services . . \$	—	\$	463,811*
2	Annual Increment	—		9,144
3	Current Expenses	—		197,246
4	Repairs and Alterations	—		1,250
5	Equipment	—		105,000
6	Adult Female Offenders Contract	—		746,658
	Personal Services Annual Increment	—	22,448	
	Current	—	468	

	Expenses.....	—	723,742	
7	Total.....	\$	—	\$ 1,523,109

* Includes salary of the commissioner at \$36,500 per annum

44—*West Virginia Penitentiary*

Acct. No. 3750

- 1 Any unexpended balance remaining in the appropri-
 2 ation for Capitol Outlay (account no. 3750-08) at the
 3 close of the fiscal year 1985-86 is hereby reappropriated
 4 for expenditure during the fiscal year 1986-87.

45—*Department of Corrections—
 Correctional Units*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

1	Personal Services ..	\$	—	\$ 12,666,865
2	Annual Increment		—	169,002
3	Current Expenses		—	6,566,098
	Inmate Medical			
	Expenses.....		—	1,586,887
	Other		—	4,979,211
4	Repairs and			
	Alterations		—	239,500
5	Equipment		—	115,000
6	Capital Outlay.....		—	3,000,000
7	Pruntytown			
8	Facility—			
	Unclassified.....		—	1,000,000
10	Total.....	\$	—	\$ 23,756,465

- 11 The commissioner of corrections, prior to the begin-
 12 ning of the fiscal year, shall file with the legislative
 13 auditor an expenditure schedule for each formerly
 14 separate spending unit which has been consolidated into
 15 the above account and which receives a portion of the
 16 above appropriation. He shall also, within fifteen days
 17 after the close of each six month period of said fiscal
 18 year, file with the legislative auditor an itemized report
 19 of expenditures made during the preceding six-month

20 period. Such report shall include the total of expendi-
 21 tures made under each of the items 1, 2, 3, 4 and 5
 22 above.

23 Any unexpended balance remaining in the appropri-
 24 ation for Capital Outlay (account no. 3770-04) and
 25 Pruntytown Facility-Unclassified (account no. 3770-07)
 26 at the close of the fiscal year 1985-86 is hereby reapprop-
 27 riated for expenditure during the fiscal year 1986-87.

HEALTH AND HUMAN SERVICES

46—*State Health Department— Central Office*

(WV Code Chapter 16)

Acct. No. 4000

1	Personal Services	\$ 2,212,342	\$ 7,002,599*
2	Annual Increment.....	28,049	126,758
3	Current Expenses	19,544,566	5,045,730
4	Repairs and Alterations	—	4,000
5	Equipment	100,669	221,449
6	Reimbursement to		
7	Community Mental		
8	Health and Mental		
	Retardation Centers	—	21,351,508
9	Reimbursement to		
10	Community Behavior		
11	Health Programs		
	for Social Services.....	—	1,613,632
12	Special Olympics	—	28,000
13	MH/MR-Special Projects	—	2,000,000
14	State Aid to Local Agencies ..	—	6,527,898
15	Grants to Counties and		
16	EMS Entities	—	1,840,000
17	Maternal and Child		
18	Health Clinics, Clinicians		
19	and Medical Contracts		
	and Fees	—	2,630,000
20	Foster Grandparents		
21	Stipends/Travel	—	62,370
22	Hemophiliac Assistance		

	Program	—	132,412
23	Annual Increment	—	684
24	Placement Programs for the		
25	Developmentally Disabled	—	3,842,750
26	Poison Control Hot Line	—	150,000
27	Primary Care Contracts to		
28	Community Health Centers	—	2,705,587
29	Agent Orange	—	206,517
30	Annual Increment	—	396
31	Alcohol, Drug Abuse,		
	and D.D.	—	2,996,000
32	Corporate Non-Profit		
33	Community Health		
34	Centers—		
	F.M.H.A. Mortgage		
	Finance	—	105,913
35	Epidemiology Research	—	263,000
36	Public Health Residency		
37	Program	—	—0—
39	Total	\$ 21,885,626	\$ 58,857,203

* Includes salary of the director at \$54,500 per annum

41 Funds appropriated on Line 23 for Annual Increment
42 shall be transferred to line 22, Hemophiliac Assistance
43 Program, only as required.

44 Funds appropriated on Line 30 for Annual Increment
45 shall be transferred to line 29, Agent Orange, only as
46 required.

47 Any unexpended balance remaining in the appropri-
48 ation for Reimbursement to Community Mental Health
49 Centers and Mental Retardation Centers (account no.
50 4201-18) at the close of the fiscal year 1985-86 is hereby
51 reappropriated for expenditure during the fiscal year
52 1986-87.

53 Any unexpended balance remaining in the appropri-
54 ation for Placement Programs for the Developmentally
55 Disabled (account no. 4000-13) and Agent Orange
56 (account no. 4000-17) at the end of the fiscal year 1985-
57 86 is hereby reappropriated for expenditure during the
58 fiscal year 1986-87.

47—*Department of Veterans Affairs—
Veterans Home*

(WV Code Chapter 9A)

Acct. No. 4010

1	Personal Services	\$	—	\$ 1,179,272
2	Annual Increment.....		—	15,516
3	Current Expenses		671,740	—
4	Repairs and Alterations		24,200	—
5	Equipment		6,500	—
7	Total	\$	702,440	\$ 1,194,788

8 Any unexpended balance remaining in the appropri-
9 ation for Repairs and Alterations (account no. 4010-02)
10 and Equipment (account no. 4010-03) at the close of the
11 fiscal year 1985-86 is hereby reappropriated for expen-
12 diture during the fiscal year 1986-87.

48—*Solid Waste Disposal*

(WV Code Chapter 16)

Acct. No. 4020

1	Personal Services	\$	—	\$ 100,150
2	Annual Increment.....		—	900
3	Current Expenses		—	30,441
4	Equipment		—	1,000
6	Total	\$	—	\$ 132,491

49—*Department of Veterans Affairs*

(WV Code Chapter 9A)

Acct. No. 4040

1	Personal Services	\$	—	\$ 708,145*
2	Annual Increment.....		—	15,048
3	Current Expenses		—	129,998
4	Equipment		—	2,000
5	Educational Opportunities for			
6	Children of War Veterans..		—	9,500
7	In aid of Veterans Day			
8	Patriotic Exercises		—	7,000

10	Total	\$	—	\$	871,691
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* Includes salary of the director at \$30,500 per annum

12 Moneys in Line 7-8 above are to be expended subject
 13 to the approval of the department of veterans affairs
 14 upon presentation of satisfactory plans by the Grafton
 15 G.A.R. Post, American Legion, Veterans of Foreign
 16 Wars and Sons of Veterans.

50—*Department of Human Services*

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

1	Personal Services	\$17,963,790	\$	11,225,340*
2	Annual Increment	425,579		515,672
3	Current Expenses	235,227,826		4,201,724
4	Repairs and Alterations	—		12,200
5	Equipment	100,000		46,757
6	Assistance Payments	—		28,403,306
7	Social Security			
8	Matching Fund	—		820,409
9	Indigent Burials	—		620,000
10	Social Services	—		20,286,465
11	Emergency Assistance	—		1,250,000
12	Medical Services	—		58,822,249
13	T.R.I.P.	—		605,000
14	Food Stamps (Value)	164,000,000#		—
15	Government Donated			
	Food (Value)	26,000,000#		
16	Public Employees Retire-			
17	ment Matching	—		—0—
18	Public Employees Health			
19	Insurance	—		650,502
20	Child Support Agency	—		2,000,000
22	Total	\$253,717,195	\$	129,459,624

For Information Only—Not Included in Total

* Includes salary of the commissioner at \$45,500 per annum

51—*State Commission on Aging*

(WV Code Chapter 29)

Acct. No. 4060

1	Personal		
	Services	\$325,963	\$ 158,035
2	Annual		
	Increment	3,939	2,862
3	Current		
	Expenses	230,012	68,000
4	Equipment	9,000	—
5	Programs for		
	Elderly	—	3,307,000
6	Golden		
	Mountaineer		
	Program	—	87,170
	Personal		
	Services	—	28,698
	Annual		
	Increment	—	472
	Other		
	Expenses	—	58,000
7	Silver Haired		
	Legislature	—	20,000
8	To Local		
	Entities	8,798,198	—
9	Senior Citizens		
10	Centers—Land		
11	Acquisition,		
	Construction,		
	Repairs and		
	Alterations	—	65,000
13	Total	\$ 9,367,112	\$ 3,708,067

14 Any unexpended balance remaining in the appropri-
15 ation for Senior Citizen Centers-Land Acquisition,
16 Construction, Repairs and Alterations (account no. 4060-
17 10), at the close of the fiscal year 1985-86 is hereby
18 reappropriated for expenditure during the fiscal year
19 1986-87.

Medical Facilities (Control)

(WV Code Chapter 16)

Acct. No. 4180

1	Personal Services	\$	—	\$	46,370,968
2	Annual Increment.....		—		1,107,784
3	Current Expenses		—		13,341,737
4	Repairs and Alterations		—		645,650
5	Equipment		—		381,918
6	Student Nurse Affiliation				
7	Program (Huntington).....		—		82,368
8	Psychiatric Training Center				
9	—Student Nurses (Weston)		—		263,051
10	Annual Increment.....		—		2,808
12	Total	\$	—	\$	62,196,284

13 The director of health, prior to the beginning of the
 14 fiscal year, shall file with the legislative auditor an
 15 expenditure schedule for each formerly separate
 16 spending unit which has been consolidated into the
 17 above account and which receives a portion of the above
 18 appropriation. He shall also within fifteen days after the
 19 close of each six-month period of said fiscal year, file
 20 with the legislative auditor an itemized report of
 21 expenditures made during the preceding six-month
 22 period. Such report shall include the total of expendi-
 23 tures made under each of line items 1, 2, 3, 4 and 5
 24 above.

25 Funds appropriated on line 10 for Annual Increment
 26 shall be transferred to line 8-9 Psychiatric Training
 27 Center—Student Nurses (Weston), only as required.

53—*State Board of Education—
 Rehabilitation Division*

(WV Code Chapter 18)

Acct. No. 4405

1	Personal Services	\$	10,510,815	\$	6,065,613
2	Annual Increment.....		42,228		285,120
3	Current Expenses		5,498,757		861,360

4	Repairs and Alterations	125,282	1,400
5	Equipment	282,537	51,600
6	Case Services	3,164,090	2,402,500
7	Social Security		
8	Matching Fund	539,341	354,363
9	WVU-Reimbursement.....	1,043,699	50,900
10	Workshop Development.....	—	1,281,400
11	Blind Services		
	Coordinating Unit.....	—	37,000
12	Disability Determination—		
13	Medical Payments.....	7,264,375	—
14	Computer Assisted		
	Drafting	—	45,000
16	Total	\$ 28,471,124	\$ 11,436,256

BUSINESS AND INDUSTRIAL RELATIONS

54—*Bureau of Labor and Department of
Weights and Measures*

(WV Code Chapters 21 and 47)

Acct. No. 4500

1	Personal Services	\$ 197,384	\$ 1,072,555*
2	Annual Increment.....	6,500	16,308
3	Current Expenses	147,811	302,764
4	Repairs and Alterations	—	750
5	Equipment	72	3,000
6	Labor Management		
7	Advisory Council	—	25,989
9	Total	\$ 351,767	\$ 1,421,366

* Includes salary of the commissioner at \$34,000 per annum

55—*Department of Employment Security*

Account No. 4510

1	Interest Assessment—		
	Total	\$ —	\$ 31,500,000

2 The above appropriation is intended to pay the federal
3 government interest due on loan advances made to the
4 state of West Virginia for payment of unemployment

5 compensation benefits.

56—*Department of Commerce*

(WV Code Chapter 5B)

Acct. No. 4625

1	Personal Services	\$	—	\$ 8,113,868*
2	Annual Increment.....		—	192,250
3	Current Expenses		—	1,899,960
4	Repairs and Alterations		—	92,436
5	Equipment		—	90,000
6	State Park—			
	Capital Outlay		—	175,000
8	Total	\$	—	\$ 10,563,514

* Includes salary of the director at \$65,000 per annum

10 Any unexpended balance remaining in the appropri-
 11 ation for Chief Logan State Park (account no. 4625-64),
 12 Cacapon State Park (account no. 4625-65), and Capital
 13 Outlay (account no. 4625-10) at the close of the fiscal
 14 year 1985-86 is hereby reappropriated for expenditures
 15 during fiscal year 1986-87.

16 Any revenue derived from mineral extraction at any
 17 state park† shall be deposited in the special revenue
 18 account of the department of commerce, first for bond
 19 debt payment purposes and with any remainder to be
 20 for park operation and improvement purposes.

57—*Interstate Commission on
 Potomac River Basin*

(WV Code Chapter 29)

Acct. No. 4730

1	West Virginia's			
2	Contribution to			
	Potomac River Basin			
	Interstate Commission	\$	—	\$ 20,300

58—*Ohio River Valley Water*

† Clerk's Note: The Governor deleted the words "or state forest" on line
 seventeen, second paragraph, Acct. No. 4625.

Sanitation Commission

(WV Code Chapter 29)

Acct. No. 4740

1	West Virginia's			
2	Contribution to the			
3	Ohio River Valley			
	Water Sanitation			
	Commission	\$	—	\$ 70,490

59—*West Virginia Air Pollution
Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

1	Personal Services	\$	837,394	\$	620,889
2	Annual Increment		6,840		7,344
3	Current Expenses		439,055		177,512
4	Equipment		32,500		500
6	Total	\$	1,315,789	\$	806,245

60—*Department of Energy*

(WV Code Chapter 22)

Acct. No. 4775

1	Personal Services	\$	3,178,487	\$	6,546,494*
2	Annual Increment		40,000		76,000
3	Current Expenses		8,924,635		1,595,644
4	Repairs and Alterations		60,183,000		75,000
5	Equipment		374,000		143,000
7	Total	\$	72,700,122	\$	8,436,138

*Includes salary of the commissioner at \$65,000 per annum and salary of the deputy commissioner at \$45,000 per annum

61—*State Athletic Commission*

(WV Code Chapter 29)

Acct. No. 4790

1	Unclassified—Total	\$	—	\$	5,500
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62—*West Virginia State Aeronautics Commission*

(WV Code Chapter 29)

Acct. No. 4850

- 1 Any unexpended balance remaining in the appropri-
 2 ation Airport Matching (account no. 4850-11) at the close
 3 of the fiscal year 1985-86 is hereby reappropriated for
 4 expenditure during fiscal year 1986-87. Any unex-
 5 pended balance is hereby redesignated as Aeronautics
 6 Commission—Airport Matching and may be transferred
 7 to account no. 1210-23 for expenditure.

63—*West Virginia Nonintoxicating
Beer Commissioner*

(WV Code Chapter 11)

Acct. No. 4900

1	Personal Services	\$	—	\$	353,870*
2	Annual Increment		—		4,575
3	Current Expenses		—		100,000
4	Equipment		—		300
6	Total	\$	—	\$	458,745

* Includes salary of the Commissioner at \$30,500 per annum

64—*West Virginia Racing Commission*

(WV Code Chapter 19)

Acct. No. 4950

1	Personal Services	\$	—	\$	1,082,546
2	Annual Increment		—		8,928
3	Current Expenses		—		113,716
4	Equipment		—		10,000
6	Total	\$	—	\$	1,215,190

AGRICULTURE

65—*Department of Agriculture*

(WV Code Chapter 19)

Acct. No. 5100

1	Salary of		
	Commissioner	\$ —	\$ 46,800
2	Other Personal		
	Services	253,165	2,203,268
3	Annual		
	Increment	1,980	46,404
4	Current Expenses.....	199,100	1,153,321
5	Equipment	82,500	60,759
6	Multiflora Rose		
7	Eradication		
	Program	—	115,000
8	Gypsy Moth		
	Program	—	300,000
9	Forestry Division	355,300	2,519,765
	Personal Services ...	—	2,069,267
	Annual Increment ...	—	47,196
	Current Expenses....	—	305,992
	Repairs and		
	Alterations	—	22,000
	Equipment	—	75,310
10	Special Livestock		
11	Maintenance		
	Program	—	150,000
13	Total	\$892,045	\$6,595,317

14 Out of the above general revenue funds a sum may
 15 be used to match federal funds for the eradication and
 16 control of pest and plant disease.

66—*Farm Management Commission*

(WV Code Chapter 19)

Acct. No. 5110

1	Personal Services	\$ —	\$ 1,117,933
2	Annual Increment.....	—	18,792
3	Current Expenses	—	946,020
4	Repairs and Alterations	—	254,000
5	Equipment	—	279,000
6	Livestock Purchase	—	273,000

8 Total\$ — \$ 2,888,745

67—*Department of Agriculture—
Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1	Personal Services	\$	—	\$	359,876
2	Annual Increment		—		7,452
3	Current Expenses		—		123,899
4	Watershed Expenses		—		200,000
6	Total	\$	—	\$	691,227

7 Any unexpended balance remaining in the appropri-
8 ation for Watershed Program (account no. 5120-06) and
9 Mud River Flood Control Project (account no. 5120-07),
10 at the close of the fiscal year 1985-86 is hereby
11 reappropriated for expenditure during the fiscal year
12 1986-87.

68—*Department of Agriculture—
Division of Rural Resources*

(Matching Fund)

(WV Code Chapter 19)

Acct. No. 5130

1	Personal Services	\$	—	\$	849,585
2	Annual Increment		—		13,284
3	Current Expenses		—		224,387
4	Equipment		—		31,000
6	Total	\$	—	\$	1,118,256

7 Any part or all of this appropriation from general
8 revenue may be transferred to special revenue fund for
9 the purpose of matching federal funds for the above-
10 named program.

69—*Department of Agriculture—
Meat Inspection*

(WV Code Chapter 19)

Acct. No. 5140

1	Personal Services	\$ 442,884	\$ 405,052
2	Annual Increment.....	6,822	6,822
3	Current Expenses	184,345	183,446
4	Equipment	1,270	1,270
5	Reimbursement	100,000	—
7	Total	\$ 735,321	\$ 596,590

8 Any part or all of the appropriation from general
 9 revenue may be transferred to special revenue fund for
 10 the purpose of matching federal funds for the above-
 11 named program.

70—*Department of Agriculture—
 Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

1	Agricultural Awards	\$ —	\$ 70,000
2	Fairs and Festivals.....	—	172,950
4	Total	\$ —	\$ 242,950

CONSERVATION AND DEVELOPMENT

71—*Geological and Economic Survey*

(WV Code Chapter 29)

Acct. No. 5200

1	Personal Services	\$ 83,484	\$ 1,395,558
2	Annual Increment.....	972	18,144
3	Current Expenses	57,594	372,245
4	Repairs and Alterations	1,000	15,138
5	Equipment	1,500	6,250
6	Special Studies.....	—	71,443
7	To Secure Federal and		
8	Other Contracts	—	75,000
10	Total	\$ 144,550	\$ 1,953,778

11 The appropriation on line 7-8, To Secure Federal and
 12 Other Contracts, may be transferred to a special
 13 revenue account for the purpose of providing advance
 14 funding for such contracts.

15 Any unexpended balance remaining in the appropri-
 16 ation To Secure Federal and Other Contracts (account
 17 no. 5200-07) at the close of the fiscal year 1985-86 is
 18 hereby reappropriated for expenditure during the fiscal
 19 year 1986-87.

72—*Water Resources Board*

(WV Code Chapter 20)

Acct. No. 5640

1	Personal Services	\$	—	\$	73,684
2	Annual Increment.....		—		540
3	Current Expenses		—		37,962
4	Repairs and Alterations		—		200
5	Equipment		—		2,654
7	Total	\$	—	\$	115,040

73—*Department of Natural Resources*

(WV Code Chapter 20)

Acct. No. 5650

1	Personal Services	\$	4,358,187	\$	4,306,929*
2	Annual Increment.....		60,356		70,290
3	Current Expenses		2,506,408		876,060
4	Repairs and Alterations		280,169		92,690
5	Equipment		880,215		76,750
6	Transfer to State				
7	Spending Units		261,100		—
8	Land and Buildings		302,000		—
10	Total	\$	8,648,435	\$	5,422,719

* Includes salary of the director at \$45,500 per annum

74—*Blennerhassett Historical
 Park Commission*

(WV Code Chapter 29)

Acct. No. 5660

1	Personal Services	\$	—	\$	185,475
2	Annual Increment.....		—		1,692
3	Current Expenses		—		53,402
4	Repairs and Alterations		—		18,000
5	Equipment		—		5,000
6	Unclassified		—		146,000
8	Total	\$	—	\$	409,569

9 Any unexpended balance remaining in the appropri-
 10 ation for Blennerhassett Island (account no. 5660-07) at
 11 the close of the fiscal year 1985-86 is hereby reappropri-
 12 ated for expenditure during the fiscal year 1986-87.

75—*Water Development Authority*

(WV Code Chapter 20)

Acct. No. 5670

1 Any unexpended balance remaining in the appropri-
 2 ation for Capital Outlay (account no. 5670-07), Phase III
 3 Hardship Grants (account no. 5670-08), Construction
 4 Grants Phase III (account no. 5670-09), Hardship Grants
 5 (account no. 5670-10), Loan and Grant Program (account
 6 no. 5670-17), Capital Outlay-Sewer (account no. 5670-
 7 18), Capital Outlay-Water (account no. 5670-19), Capital
 8 Outlay-Sewer (account no. 5670-20) and Marshall
 9 County PSD #1 Sewer (account no. 5670-22) at the close
 10 of the fiscal year 1985-86, is hereby reappropriated for
 11 expenditure during fiscal year 1986-87.

76—*West Virginia Railroad**Maintenance Authority*

(WV Code Chapter 29)

Acct. No. 5690

1	Personal Services	\$	—	\$	529,278
2	Annual Increment.....		—		4,824
3	Current Expenses		—		150,000
4	Repairs and Alterations		100,000		170,000
5	B & O Commuter Service		100,000		—

7 Total\$ 200,000 \$ 854,102

8 Any unexpended balance remaining in the appropri-
 9 ation for Unclassified at the close of the fiscal year 1985-
 10 86 is hereby reappropriated for expenditure during the
 11 fiscal year 1986-87.

PROTECTION

77—Department of Public Safety

(WV Code Chapter 15)

Acct. No. 5700

1	Personal Services	\$ 15,318	\$ 16,992,125*
2	Annual Increment.....	288	86,328
3	Current Expenses	133,005	7,648,980
4	Repairs and Alterations	—	300,000
5	Equipment	10,000	2,100,000
6	Emergency Fund	—	10,000
8	Total	\$ 158,611	\$ 27,137,433

* Includes salary of the superintendent at \$42,500 per annum

78—Adjutant General—State Militia

(WV Code Chapter 15)

Acct. No. 5800

1	Personal Services	\$ —	\$ 282,140*
2	Annual Increment.....	—	5,508
3	Current Expenses	—	684,800
4	Repairs and Alterations	—	62,000
5	Equipment	—	20,000
6	Compensation of		
7	Commanding Officers,		
8	Clerical Allowances		
	and Uniform Allowances ..	—	124,000
9	Property Maintenance	—	1,179,212
10	Annual Increment.....	—	15,444
11	State Armory Board.....	781,972	2,493,966
12	Annual Increment.....	3,096	13,572
13	College Education Fund	—	200,000

15 Total\$ 785,068 \$ 5,080,642

* Includes salary of the adjutant general at \$34,000 per annum

16 Funds appropriated on line 10 for Annual Increment
17 shall be transferred to line 9, Property Maintenance,
18 only as required.

19 Funds appropriated on line 12 for Annual Increment
20 shall be transferred to line 11, State Armory Board, only
21 as required.

BOARDS AND COMMISSIONS

79—*West Virginia Civil Service System*

(WV Code Chapter 29)

Acct. No. 5840

1	Personal Services	\$	—	\$	941,921*
2	Annual Increment.....		—		14,616
3	Current Expenses		—		259,680
4	Equipment		—		64,000
6	Total	\$	—	\$	1,280,217

* Includes salary of the director at \$36,500 per annum

8 The director shall maintain accurate records reflect-
9 ing the cost of administering the provisions of this
10 appropriation. At the close of each quarter-year period,
11 the director shall summarize the cost and shall bill each
12 department, commission, board or agency which re-
13 ceives support from any funds other than general
14 revenue fund for a pro rata share of the administrative
15 cost based on the relationship between the quarterly-
16 average number of employees in the service of such
17 department, commission, board, or agency and the
18 quarterly-average number of employees in the service of
19 all the departments, commissions, boards and agencies
20 of the state for the appropriate calendar quarter.

21 This reimbursement is to be deposited in the general
22 revenue fund.

(WV Code Chapter 29)

Acct. No. 5900

1	Council and Central Office ...\$	—	\$	154,291
2	Annual Increment.....	—		792
3	Other Expenses	—		48,537
4	Appointed Counsel Fees	—		3,748,881
5	Public Defender Operations.....	—		577,300
6	Criminal Law Research			
7	Center Appellate Division	—		135,171
9	Total	\$	—	\$ 4,664,972

10 Any unexpended balance remaining in the appropriation Appointed Counsel Fees (account no. 5900-11) at
11 the close of the fiscal year 1985-86 is hereby reappropriated for expenditure during the fiscal year 1986-87.

14 Funds appropriated on line 2 for Annual Increment
15 shall be transferred to line 1, Council and Central
16 Office, only as required.

81—*Human Rights Commission*

(WV Code Chapter 5)

Acct. No. 5980

1	Personal Services	\$	205,440	\$	466,187
2	Annual Increment.....		180		5,220
3	Current Expenses		65,999		228,078
4	Equipment		—		11,708
6	Total	\$	271,619	\$	711,193

82—*Women's Commission*

(WV Code Chapter 29)

Acct. No. 6000

1	Personal Services	\$	—	\$	54,174
2	Annual Increment.....		—		504
3	Current Expenses		—		21,245
4	Equipment		—		3,700

6	Total	\$	—	\$	79,623
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83—*Education Employees Grievance Board*

(WV Code Chapter 18)

Acct. No. 6015

1	Personal Services	\$	—	\$	208,750
2	Annual Increment		—		720
3	Current Expenses		—		85,000
4	Equipment		—		28,500
6	Total	\$	—	\$	322,970

84—*West Virginia Public Employees
Retirement Board*

(WV Code Chapter 5)

Acct. No. 6140

1	Employers Accumulation Fund	\$	—	\$	—0—
2	Expense Fund		—		70,000
3	Supplemental Benefits For				
4	Annuitants		—		2,232,000
6	Total	\$	—	\$	2,302,000

7 The above appropriation is intended to cover the
8 state's share of West Virginia public employees retire-
9 ment coverage for those departments operating from the
10 general revenue fund. The state department of high-
11 ways, department of motor vehicles, workers' compen-
12 sation commissioner, public service commission and
13 other departments operating from special revenue funds
14 and/or federal funds shall pay their proportionate share
15 of the retirement costs for their respective divisions.
16 When specific appropriations are not made, such
17 payments may be made from the balance in the various
18 special revenue funds in excess of specific
19 appropriations.

20 The board shall transfer and cause to expire into the
21 state fund, general revenue of the state, the employer

22 contribution moneys received from those departments
 23 operating from special revenue funds, except the state
 24 department of highways.

85—*West Virginia Public Employees
 Insurance Board*

(WV Code Chapter 5)

Acct. No. 6150

1	Personal Services	\$	—	\$	368,180
2	Annual Increment.....		—		6,516
3	Public Employees				
	Health Insurance		—		
4	State Contributions.....		—		68,244,064
6	Total	\$	—	\$	68,618,760

7 The above appropriation is intended to cover the
 8 state's share of public employees health insurance costs
 9 for those spending units operating from the general
 10 revenue fund. The state department of highways,
 11 department of motor vehicles, workers' compensation
 12 commissioner, public service commission and other
 13 departments operating from special revenue funds
 14 and/or federal funds shall pay their proportionate share
 15 of the public employees health insurance cost for their
 16 respective divisions. When specific appropriations are
 17 not made, such payments may be made from the
 18 balances in the various special revenue funds in excess
 19 of specific appropriations.

20 Any unexpended balance remaining in the appropri-
 21 ation Public Employees Health Insurance State Contri-
 22 butions at the close of the fiscal year 1985-86 is hereby
 23 reappropriated for expenditure during the fiscal year
 24 1986-87.

86—*Insurance Commissioner*

(WV Code Chapter 33)

Acct. No. 6160

1	Personal Services	\$	—	\$	821,695*
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2	Annual Increment.....	—	3,024
3	Current Expenses	—	240,895
4	Equipment	—	20,000
6	Total	\$ —	\$ 1,085,614

* Includes salary of the commissioner at \$35,000 per annum

87—*State Fire Commission*

(WV Code Chapter 29)

Acct. 6170

1	Personal Services	\$ —	\$ 677,574
2	Annual Increment.....	—	9,864
3	Current Expenses	—	289,662
4	Repairs and Alterations	—	3,151
5	Equipment	—	36,374
7	Total	\$ —	\$ 1,016,625

1 **Sec. 3. Appropriations from other funds.**—From
 2 the funds designated there is hereby appropriated
 3 conditionally upon the fulfillment of the provisions set
 4 forth in chapter five-a, article two of the code, the
 5 following amounts, as itemized, for expenditure during
 6 the fiscal year one thousand nine hundred eighty-seven.

1 **Sec. 4. Appropriations of federal funds.**—In ac-
 2 cordance with chapter four, article eleven, federal funds
 3 are hereby appropriated conditionally upon the ful-
 4 fillment of the provisions set forth in chapter five-a,
 5 article two, of the code, the following amounts, as
 6 itemized, for expenditure during the fiscal year one
 7 thousand nine hundred eighty-seven.

8 Any unexpended balances remaining for federal funds
 9 at the close of the fiscal year 1985-86 are hereby
 10 reappropriated for expenditure during the fiscal year
 11 1986-87.

88—*State Department of Highways*

(WV Code Chapters 17 and 17C)

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

	Federal Funds Fiscal Year 1986-87	Other Funds Fiscal Year 1986-87
1 Maintenance Expressway,		
2 Trunkline and Feeder	\$ —	\$ 55,000,000
3 Maintenance, State		
Local Services.....	—	75,137,000
4 Maintenance, Contract		
5 Paving and Secondary		
Road Maintenance.....	—	30,000,000
6 Inventory Revolving	—	1,599,000
7 Toll Road Examination	—	500,000
8 Equipment Revolving	—	12,329,000
9 General Operations	—	23,821,000*
10 Annual Increment.....	—	208,000
11 Debt Service	—	83,650,000
12 Interstate Construction	—	124,989,000
13 Other Federal Aid Program	—	190,721,000
14 Appalachian Program	—	30,149,000
15 Nonfederal Aid Construction	—	5,041,000
17 Total	\$ —	\$633,144,000

*Includes Salary of Commissioner at \$47,500 per annum

18 The above appropriation line items are to be expended
19 in accordance with the provisions of chapters seventeen
20 and seventeen-c of the code.

21 The state commissioner of highways shall have the
22 authority to operate revolving funds within the state
23 road fund for the operation and purchase of various
24 types of equipment used directly and indirectly in the
25 construction and maintenance of roads and for the
26 purchase of inventories and materials and supplies.

27 There is hereby appropriated within the above items
28 sufficient money for the payment of claims, accrued or
29 arising during this budgetary period, to be paid in
30 accordance with chapter fourteen, article two, sections
31 seventeen and eighteen of the code.

32 Funds appropriated on line 10 for Annual Increment
33 shall be transferred to line 9, General Operations, only
34 as required.

35 The employer contribution moneys usually trans-
36 ferred to the West Virginia public employees retirement
37 board as payments made by the department as its share
38 of coverage will be retained during fiscal year 1986-87
39 and expended for contract paving purposes under item
40 four of this account, Maintenance, Contract Paving and
41 Secondary Road Maintenance.

89—*Department of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	—	\$	2,550,215*
2	Annual Increment.....		—		48,708
3	Current Expenses		—		3,367,203
4	Equipment		—		323,900
5	Purchase of License Plates ...		—		567,180
6	Social Security Matching		—		198,360
7	Public Employees				
8	Retirement Matching.....		—		263,556
9	Public Employees Health				
10	Insurance.....		—		349,237
12	Total	\$	—	\$	7,668,359

*Includes salary of commissioner at \$36,500 per annum

90—*Department of Education—
Veterans Education*

(WV Code Chapter 18)

Acct. No. 7979

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	73,883	\$	—
2	Annual Increment.....		1,728		—
3	Current Expenses		54,230		—
4	Equipment		500		—

6 Total \$ 130,341 \$ —

7 Expenditures from this appropriation shall not exceed
8 the amount to be reimbursed by the Federal
9 government.

10 Federal funds in excess of the amounts hereby
11 appropriated may be made available by budget amend-
12 ment upon request of the state superintendent of schools
13 and approval of the governor for any emergency which
14 might arise in the operation of this division during the
15 fiscal year.

91—*Treasurer's Office—
Abandoned and Unclaimed Property*
(WV Code Chapters 12 and 36)

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 140,021
2	Annual Increment.....	—	504
3	Current Expenses	—	67,746
5	Total	\$ —	\$ 208,271

92—*Treasurer's Office—Disaster Recovery Fund*

Acct. No. 8007-18

TO BE PAID FROM SPECIAL REVENUE FUND

1	Housing Development Fund		
2	Single Family Dwelling ...	\$ —	\$ 2,000,000
3	Housing Development Fund		
4	Last Resort Program	—	2,000,000
6	Total	\$ —	\$ 4,000,000

7 All revenue collected by the tax commissioner under
8 the provisions of this article, the disposition of which is
9 not otherwise dedicated by constitutional provision or
10 prior statutory enactment, shall be paid by him into a
11 special Disaster Recovery Fund, which is hereby created
12 in the state treasury to be used as appropriated by the

- 13 Legislature for the recovery of losses occurring in the
 14 November, one thousand nine hundred eighty-five flood
 15 disaster, in twenty-nine counties of this state.

93—*Real Estate Commission*

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	133,437
2	Annual Increment		—		1,872
3	Current Expenses		—		146,005
4	Equipment		—		5,000
6	Total	\$	—	\$	286,314

- 7 The total amount of the appropriation shall be paid
 8 out of collections of license fees as provided by law.

94—*Regional Jail and Prison Authority*

(WV Code Chapter 31)

Acct. No. 8050

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	262,940
2	Annual Increment		—		4,000
3	Current Expenses		—		193,313
4	Repairs and Alterations		—		7,500
5	Equipment		—		16,250
7	Total	\$	—	\$	484,003

95—*West Virginia Racing Commission*

(WV Code Chapter 19)

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$	—	\$	5,000
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- 2 The total amount of this appropriation shall be paid

3 from special revenue fund out of collections of license
4 fees and fines as provided by law.

5 No expenditures shall be made from this amount
6 except for hospitalization, medical care and/or funeral
7 expenses for persons contributing to this fund.

96—*Auditor's Office—*
Land Department Operating Fund
(WV Code Chapters 11A, 12 and 36)
Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	12,000
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2 The total amount of this appropriation shall be paid
3 from special revenue fund out of fees and collections as
4 provided by law.

97—*Department of Finance and Administration*
Division of Purchasing—Revolving Fund
(WV Code Chapter 5A)
Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	892,559
2	Annual Increment.....		—		15,300
3	Current Expenses		—		456,899
4	Equipment		—		60,000
5	Social Security				
	Matching		—		65,658
6	Public Employees				
7	Retirement Matching.....		—		87,238
8	Public Employees				
9	Health Insurance.....		—		107,470
11	Total	\$	—	\$	1,685,124

12 The total amount of this appropriation shall be paid
13 from special revenue fund as provided by chapter five-
14 a, article two of the code.

15 The above appropriation includes salaries and operat-
16 ing expenses.

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

98—*Department of Finance and Administration—
Information Systems Service Division Fund*

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	3,073,743
2	Annual Increment.....		—		50,148
3	Current Expenses		—		5,251,397
4	Equipment		—		207,000
5	Social Security Matching		—		227,250
6	Public Employees				
7	Retirement Matching.....		—		301,940
8	Public Employees				
9	Health Insurance.....		—		394,130
11	Total	\$	—	\$	9,505,608

12 The total amount of this appropriation shall be paid
13 from special revenue fund out of collections made by the
14 department of finance and administration as provided
15 by law.

99—*Department of Agriculture*

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	447,894
2	Annual Increment.....		—		5,940
3	Current Expenses		—		25,724
4	Social Security Matching		—		33,121
5	Public Employees				
6	Retirement Matching.....		—		44,008

7	Public Employees Health		
8	Insurance	—	37,192
10	Total	\$ —	\$ 593,879

11 The total amount of this appropriation shall be paid
 12 from special revenue fund out of collections made by the
 13 department of agriculture as provided by law.

100—*General John McCausland Memorial Farm*

(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —	\$ 80,000
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2 Funds for the above appropriation shall be disbursed
 3 in accordance with chapter nineteen, article twenty-six
 4 of the code.

101—*State Committee of Barbers and Beauticians*

(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 146,049
2	Annual Increment	—	3,132
3	Current Expenses	—	108,200
4	Equipment	—	1,600
6	Total	\$ —	\$ 258,981

7 The total amount of this appropriation shall be paid
 8 from special revenue fund out of collections made by the
 9 state committee of barbers and beauticians as provided
 10 by law.

102—*Public Service Commission*

(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 56,997	\$ 3,573,656*
2	Annual Increment.....	—	41,112
3	Current Expenses	22,127	1,293,230
4	Equipment	—	90,000
5	Repairs and Alterations	—	30,000
6	Social Security		
	Matching	—	266,192
7	Public Employees		
8	Retirement Matching.....	—	353,681
9	Public Employees Health		
10	Insurance	—	305,416
12	Total	<u>\$ 79,124</u>	<u>\$ 5,953,287</u>

* Includes salaries of the commissioners: chairman at \$35,275 and two members at \$31,600 each per annum

13 The total amount of this appropriation shall be paid
 14 from special revenue fund out of collections for special
 15 license fees from public service corporations as provided
 16 by law.

103—*Public Service Commission—
 Gas Pipeline Division*

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 29,686	\$ 165,350*
2	Annual Increment.....	—	1,153
3	Current Expenses	15,841	68,704
4	Equipment	—	1,500
5	Social Security		
	Matching	—	12,339
6	Public Employees		
7	Retirement Matching.....	—	16,395
8	Public Employees		
9	Health Insurance.....	—	14,000
11	Total	<u>\$ 45,527</u>	<u>\$ 279,441</u>

* Includes salaries of three members at \$1,500 per annum each

12 The total amount of this appropriation shall be paid

13 from special revenue fund out of receipts collected for
 14 or by the public service commission pursuant to and in
 15 the exercise of regulatory authority over pipeline
 16 companies.

104—*Public Service Commission—
 Motor Carrier Division*

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	1,098,564*
2	Annual Increment		—		13,284
3	Current Expenses		60,000		349,490
4	Equipment		—		5,000
5	Social Security Matching		—		81,506
6	Public Employees				
7	Retirement Matching		—		108,294
8	Public Employees				
9	Health Insurance		—		96,304
11	Total	\$	60,000	\$	1,752,442

* Includes salaries of three members at \$7,525 each per annum

12 The total amount of this appropriation shall be paid
 13 from special revenue fund out of receipts collected for
 14 or by the public service commission pursuant to and in
 15 the exercise of regulatory authority over motor carriers.

105—*Public Service Commission—
 Consumer Advocate*

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	285,784
2	Annual Increment		—		972
3	Current Expenses		—		286,634
4	Equipment		—		3,200
5	Social Security Matching		—		21,114
6	Public Employees				

7	Retirement Matching	—	28,054
8	Public Employees		
9	Health Insurance	—	29,040
11	Total	\$ —	\$ 654,798

12 The total amount of this appropriation shall be paid
 13 from special revenue fund out of collections made by the
 14 public service commission.

106—*Department of Natural Resources*

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 3,950,285
2	Annual Increment	—	108,832
3	Current Expenses	—	2,656,745
4	Repairs and Alterations	—	72,000
5	Equipment	—	414,357
6	Land Purchase and Buildings	—	710,000
8	Total	\$ —	\$ 7,912,219

9 The total amount of this appropriation shall be paid
 10 from special revenue fund out of fees collected by the
 11 department of natural resources. Expenditures shall be
 12 limited to the amounts appropriated except for federal
 13 funds received and special funds collected at state parks.

14 Any unexpended balances remaining in the prior
 15 appropriation item Land Purchase and Buildings
 16 (account no. 8300-09) at the close of the fiscal year 1985-
 17 86 and available for capital improvement and land
 18 purchase purposes are hereby reappropriated for
 19 expenditure in fiscal year 1986-87, all in accordance
 20 with chapter twenty, article two, section thirty-four of
 21 the code.

107—*West Virginia Hospital Finance Authority*

(WV Code Chapter 16)

Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total\$ — \$ 122,055

2 The total amount of this appropriation shall be paid
 3 from special revenue fund out of fees and collections as
 4 provided by chapter sixteen, article twenty-nine-a of the
 5 code.

6 Special funds in excess of the amount herein approp-
 7 riated may be made available by budget amendments
 8 upon request of the commissioner of finance and
 9 administration and the approval of the governor.

108—*Department of Public Safety—
 Inspection Fees*

(WV Code Chapter 15)

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	450,128
2	Annual Increment.....		—		1,512
3	Current Expenses		—		184,490
4	Repairs and Alterations		—		1,000
5	Equipment		—		12,000
7	Total	\$	—	\$	649,130

8 The total amount of this appropriation shall be paid
 9 from special revenue fund out of fees collected for
 10 inspection stickers as provided by law.

109—*Department of Public Safety
 Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1	Current Expenses	\$	—	\$	595,000
2	Equipment		—		5,000

4 Total\$ — \$ 600,000

5 The total amount of this appropriation shall be paid
 6 from special revenue funds out of receipts collected
 7 pursuant to sections nine-a and sixteen, article fifteen,
 8 chapter eleven of the code, and paid into a revolving
 9 fund account in the state treasury.

110—*Department of Banking*

(WV Code Chapter 31A)

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 707,983*
2	Annual Increment.....	—	6,192
3	Current Expenses	—	593,741
4	Equipment	—	7,000
6	Total	\$ —	\$ 1,314,916

* Includes salary of the commissioner at \$36,500 per annum

111—*Crime Victim Compensation Fund*

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 123,150
2	Current Expenses	—	26,922
3	Equipment	—	8,000
4	Victim Compensation Program.....	190,000	—
6	Total	\$ 190,000	\$ 158,072

7 These funds are intended to be expended for court
 8 costs and administrative costs.

112—*State Health Department—
Hospital Services*

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

(WV Code Chapter 16)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

1	Administrative.....\$	—	\$	187,110
2	Welch Emergency			
3	Hospital Contingency for			
4	Operating and			
5	Miscellaneous	—		2,000,000
6	Contingency for			
	Repairs and			
7	Alterations, Equipment,			
8	Emergency Services and			
9	Miscellaneous Projects.....	—		500,000
10	DD and Chronic			
	Mentally Ill			
11	Group Homes West Virginia			
12	Behavioral Health Care			
13	Delivery System Plan Capital			
14	Outlay and Renovations....	—		1,800,000
15	Colin Anderson Center Capital			
16	Outlay and Renovations			
17	for Certification, Life Safety and			
18	Energy Conservation	—		250,000
19	Denmar Hospital—Capital			
20	Outlay and Renovations			
21	for Certification, Life Safety and			
22	Energy Conservation	—		200,000
23	Greenbrier Center—Capital			
24	Outlay and Renovations			
25	for Certification, Life Safety and			
26	Energy Conservation	—		300,000
27	Contingency for Repairs and			
28	Alterations, Equipment,			
29	Emergency Services and			
30	Miscellaneous Projects.....	—		500,000
31	DD and Chronic Mentally Ill			
32	Group Homes—West Virginia			
33	Behavioral Health Care			
34	Delivery System Plan Capital			
35	Outlay and Renovations....	—		2,825,000
36	Hopemont Hospital—Capital			

37	Outlay and Renovations for		
38	Certification, Life Safety		
39	and Energy Conservation . .	—	490,000
40	Lakin Hospital— Capital Outlay		
41	and Renovations for		
42	Certification, Life Safety		
43	and Energy Conservation . .	—	170,000
44	Weston Hospital—Capital Outlay		
45	and Renovations for Certification,		
46	Life Safety and Energy Conservation—		140,000
48	Total	\$ —	\$ 9,362,110

49 The total amount of this appropriation shall be paid
 50 from the hospital services revenue account special fund
 51 created by chapter sixteen, article one, section fifteen-
 52 a of the code.

53 Projects are to be paid on a cash basis and made
 54 available from the date of passage. Items and projects
 55 of this appropriation are to begin as funds become
 56 available in the special fund. Projects are to begin in the
 57 listed order of priority herein, except implementation
 58 costs, not to exceed ten percent of each appropriation,
 59 shall be made available from the date of passage.

60 Any unexpended balances remaining in this appropri-
 61 ation and prior years appropriations at the close of the
 62 fiscal year 1985-86 is hereby reappropriated for expen-
 63 diture during the fiscal year 1986-87 with the exception
 64 of account no. 8500-43 (FY 85) Huntington Hospital -
 65 West Virginia Behavioral Health Care Delivery System
 66 Plan Capital Outlay and Renovations, \$1,300,000 shall be
 67 deleted and account no. 8500-08 Pinecrest Hospital
 68 Capital Outlay and Renovations (FY 82) shall be
 69 reduced to \$54,478, to be effective from date of passage
 70 of the budget act.

71 Any unexpended balance remaining in the appropri-
 72 ation Hospital Services Revenue Account at the close of
 73 the fiscal year 1985-86 is hereby reappropriated for
 74 expenditure during fiscal year 1986-87.

(WV Code Chapter 16)

Acct. No. 8510

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 112,001	\$ 594,200
2	Annual Increment.....	1,008	3,996
3	Current Expenses	178,027	467,251
4	Equipment	—	5,000
6	Total	\$ 291,036	\$ 1,070,447

7 The above appropriation items are to be expended in
 8 accordance with and pursuant to the provisions of
 9 chapter sixteen, article twenty-nine-b of the code, and
 10 from the special revolving fund designated health care
 11 cost review fund.

114—*Geological and Economic Survey*

(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —	\$ 120,000
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2 The above appropriation shall be used in accordance
 3 with chapter twenty-nine, article two, section four of the
 4 code.

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

(WV Code Chapter 18)

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ —	\$ 543,000
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2 The total amount of this appropriation shall be paid
 3 from the special capital improvement fund created in
 4 chapter eighteen, article twenty-four, section four of the
 5 code.

116—*Board of Regents—
State System Registration Fee
Special Capital Improvements Fund
(Capital Improvement and Bond Retirement Fund)*

(WV Code Chapter 18)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ —	\$ 2,397,000
2	Capital Building		
3	Repairs and Alterations ...	—	4,500,000
4	(Supplements Operating		
5	Budget at College		
	and Universities)		
6	Miscellaneous Campus		
7	Development Projects	—	1,400,000
9	Total	\$ —	\$ 8,297,000

10 The total amount of this appropriation shall be paid
11 from the special capital improvement fund created by
12 chapter eighteen, article twenty-four, section four of the
13 code. Projects are to be paid on a cash basis and made
14 available from the date of passage.

15 Any unexpended balances remaining in prior years
16 and 1985-86 appropriations at the close of the fiscal year
17 1985-86 are hereby reappropriated for expenditure
18 during the fiscal year 1986-87, except account number
19 8835-66, fiscal year 1985, which shall expire on June 30,
20 1986.

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

(WV Code Chapter 18)

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ —	\$ 1,639,000
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2 The total amount of this appropriation shall be paid
 3 from the nonrevolving special capital improvement fund
 4 created by chapter eighteen, article twenty-four, section
 5 four of the code.

118—*Board of Regents—
 State System Registration Fee
 Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years
 2 and 1985-86 appropriations are hereby reappropriated
 3 for expenditure during fiscal year 1986-87.

119—*Board of Regents—
 State System Tuition Fee
 Special Capital Improvement Fund*

(Capital Improvement and
 Bond Retirement Fund)

(WV Code Chapter 18)

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$ 13,282,000
2	Building and Campus			
3	Renewal		—	9,000,000
5	Total	\$	—	\$ 22,282,000

6 The total amount of this appropriation shall be paid
 7 from the special capital improvement fund created by
 8 chapter eighteen, article twelve-b of the code. Projects
 9 are to be paid on a cash basis and made available from
 10 the date of passage.

11 From the appropriation Building and Campus Rene-
 12 wal, \$200,000 is intended for repairs and alterations for
 13 Jackson's Mill.

- 14 Any unexpended balances remaining in prior years'
 15 and in the 1985-86 appropriations are hereby reappropriated for expenditure during the fiscal year 1986-87,
 16 except account number 8855-46, fiscal year 1985, which
 17 shall expire on June 30, 1986.
 18

120—*Board of Regents—
 State System Tuition Fees—
 Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

- 1 Any unexpended balances remaining in prior years'
 2 and in the 1985-86 appropriations are hereby reappropriated for expenditure during the fiscal year 1986-87.
 3

121—*Workers' Compensation Commissioner*

(WV Code Chapter 23)

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Personal Services .. \$	—	\$ 8,537,543
2	Annual Increment	—	109,260
3	Current Expenses	—	5,307,263
4	Equipment	—	180,000
5	Social Security Matching	—	623,723
6	Public Employee		
7	Retirement		
	Matching	—	828,723
8	Public Employees		
9	Health Insurance	—	852,420
10	Employers' Excess		
11	Liability Fund...	—	541,201
12	Personal Services	—	131,537
13	Annual Increment	—	576
14	Current Expenses	—	346,839
15	Equipment	—	21,850
16	Social Security Matching	—	9,619

17	Public Em-		
18	ployees Retirement Matching	12,780	
19	Public Em-		
20	ployees Health Insurance—	18,000	
22	Total	\$ —	\$ 16,980,133

23 There is hereby authorized to be paid out of the above
 24 appropriation for Current Expenses the amount neces-
 25 sary for the premiums on bonds given by the state
 26 treasurer as bond custodian for the protection of the
 27 workers' compensation fund. This sum shall be
 28 transferred to the board of insurance.

*122—West Virginia Alcohol
 Beverage Control Commissioner*

(WV Code Chapter 60)

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ —	\$ 9,684,683
2	Annual Increment	—	220,356
3	Current Expenses	—	5,359,158
4	Repairs and Alterations	—	72,800
5	Equipment	—	109,000
6	Social Security Matching	—	714,025
7	Public Employees		
8	Retirement Matching	—	948,705
9	Public Employees		
10	Health Insurance	—	1,342,000
12	Total	\$ —	\$ 18,450,727

13 The total amounts of this appropriation shall be paid
 14 from special revenue fund out of liquor revenues.

15 The above appropriations include the salary of the
 16 commissioner, salaries of store personnel, store inspec-
 17 tors, store operating expenses and equipment; and
 18 salaries, expenses and equipment of administration
 19 offices.

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

123—*West Virginia University*
Medical School

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$	—	\$	8,165,800
2	Annual Increment.....		—		4,000
3	Current Expenses		—		3,837,000
4	Repairs and Alterations		—		774,000
5	Equipment		—		797,000
6	WVU Family Practice				
7	Program.....		—		432,000
8	Capital Outlay		—		1,000,000
10	Total	\$	—	\$	15,009,800

11 Any unexpended balances remaining in the appropri-
 12 ations for Capital Outlay (account no. 9280-08) and the
 13 1985-86 appropriation for the West Virginia Univer-
 14 sity—Medical Center at the close of the fiscal year 1985-
 15 86 are hereby reappropriated for expenditure during
 16 fiscal year 1986-87.

1 **Sec. 5. Awards for claims against the state.—**

2 There are hereby appropriated, for the remainder of the
 3 fiscal year 1985-86 and to remain in effect until June
 4 30, 1987, from the funds as designated, in the amounts
 5 as specified and for the claimants as named in enrolled
 6 house bill 1871, acts, legislature, regular session, 1986,
 7 crime victim compensation fund of \$391,521.06 for
 8 payment of claims against the state.

9 There are hereby appropriated for the remainder of
 10 the fiscal year 1985-86 and to remain in effect until June
 11 30, 1987, from the funds as designated, in the amounts
 12 as specified, and for the claimants as named in enrolled
 13 house bill no. 1960 and no. 1961, acts, legislature,

14 regular session, 1986 total general revenue funds of
 15 \$632,699.04, state road funds of \$583,712.62, special
 16 revenue funds of \$18,439.14 and federal funds of
 17 \$13,136.56 for payments of claims against the state.

18 The total of general revenue funds above does not
 19 include payment from the treasurer's office-account no.
 20 1600, specifically made payable from the appropriation
 21 for the current fiscal year 1985-86.

1 **Sec. 6. Supplemental and deficiency appropria-**
 2 **tion.**—From the state fund, general revenue, except as
 3 otherwise provided, there are hereby appropriated the
 4 following amounts, as itemized, for expenditure during
 5 the fiscal year one thousand nine hundred eighty-six to
 6 supplement the 1985-86 appropriations, and to be
 7 available for expenditure upon date of passage.

8 Any unexpended balance remaining in the appropri-
 9 ation balances at the close of the fiscal year 1985-86 is
 10 hereby reappropriated for expenditure during the fiscal
 11 year 1986-87.

*124—Office of Community and
 Industrial Development*

Acct. No. 1210

1	Economic Development			
2	Loan Fund—Total	\$	—	\$ 1,125,000

125—Office of Emergency Services

Acct. No. 1300

1	Current Expenses			\$ —0—
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126—State Tax Department

Acct. No. 1800

1	Property Reappraisal Program			\$ —0—
2	Reimbursement to			
3	twenty-nine counties			

4 for loss of tax revenue
 5 due to 1985 flood — 800,000

127—*State Board of Insurance*

Acct. No. 2250

1 Premiums, Claims
 2 and Other
 3 Expenses—Total\$ — \$ —0—

128—*Marshall University—Medical School*

Acct. No. 2840

1 Personal Services \$ — \$ 150,000

129—*Educational Broadcasting Authority*

Acct. No. 2910

1 Equipment \$ — \$ 150,386

130—*Department of Corrections*

Acct. No. 3770

1 Current Expenses \$ — \$ 100,000
 2 Other — —0—

131—*Department of Human Services*

Acct. No. 4050

1 Assistance Payments \$ —0—
 2 Medical Services 7,000,000
 3 Emergency Flood Disaster
 4 Assistance for Replacement
 Residential Housing, Site
 5 Acquisition, or both, in
 the 29 counties 3,000,000
 7 Total \$ 10,000,000

132—*Department of Employment Security*

Acct. No. 4510

1	Interest Assessment—Total	\$	—0—
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133—*Department of Commerce*

Acct. No. 4625

1	Personal Services	\$	368,000
2	Current Expenses		417,000
3	Equipment		75,000
4	Repairs and Alterations		10,000
5	Grave Creek Mound State Park		—0—
6	Interstate Information Centers		—0—
8	Total	\$	870,000

134—*Department of Agriculture—Soil Conservation*

Acct. No. 5120

1	Flood Damage Re-		
2	habilitation—Farm Property and Facility	\$	1,590,000

135—*West Virginia Public Legal Services Council*

Acct. No. 5900

1	Appointed Council Fees—Total	\$	480,000
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1 **Sec. 7. Appropriations from Revenue Sharing**
 2 **Trust Fund.**—The following items are hereby appropri-
 3 ated from the revenue sharing trust fund to be
 4 available for expenditure from date of passage.

136—*Department of Finance and Administration*

Acct. No. 9740

1	Building Repairs and Alterations	\$	782,922
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1 **Sec. 8. Reappropriations—Revenue Sharing**

2 **Trust Fund.**—Any unexpended balances to appropria-
 3 tions made by the 1973, 1974, 1975, 1976, 1977, 1978,
 4 1979, 1980, 1981, 1982, 1983, 1984 and 1985 budget acts
 5 and any supplementary transfers, or redesignation
 6 made by the above listed budget acts, for revenue
 7 sharing trust fund, at the close of the fiscal year 1985-
 8 86 are hereby reappropriated for expenditure during
 9 the fiscal year 1986-87, with the exception of account
 10 numbers 9718-06 (fiscal year 1981), 9782-05 (fiscal year
 11 1984) and 9790-00 (fiscal year 1984), which shall expire
 12 June 30, 1986.

1 **Sec. 9. Appropriation from federal block**
 2 **grants.**—The following items are hereby appropriated
 3 from federal block grants and to be available for
 4 expenditure during the fiscal year 1986-87.

*137—Office of Community and Industrial
 Development—Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	190,731
2	Annual Increment		1,800
3	Current Expenses		243,705
4	Equipment		5,000
5	To Local Entities		15,086,336
7	Total		<u>\$15,527,572</u>

*138—Office of Community and Industrial
 Development—Job Partnership Training Act*

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	—	\$	1,230,754
2	Annual Increment		—		17,784
3	Current Expenses		—		1,023,112
4	Equipment		—		150,000
5	To Local Entities		—		33,075,528
6	Transfer to State				

7	Spending Units	—	13,000,000
9	Total	\$ —	\$ 48,497,178

139—*Office of Community and Industrial
Development—Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	111,400
2	Annual Increment		1,116
3	Current Expenses		105,654
4	Equipment		2,000
5	To Local Entities		3,935,336
7	Total	\$	4,155,506

140—*Office of Community and Industrial
Development Justice Assistance*

Acct. No. 8032

TO BE PAID FROM FEDERAL FUNDS

1	To Local Entities—Total	\$	600,000
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141—*State Department of Education—
Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	947,717
2	Annual Increment		16,146
3	Current Expenses		496,255
4	Repairs and Alterations		100
5	Equipment		9,355
6	To Local Entities		38,875,171
8	Total	\$	40,344,744

142—*State Health Department—
Maternal and Child Health*

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$ 753,275
2	Annual Increment	10,584
3	Current Expenses	6,084,437
4	Equipment	55,000
6	Total	<u>6,903,296</u>

143—*State Health Department—
Alcohol, Drug Abuse and Mental Health*

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$ 404,794
2	Annual Increment	4,543
3	Current Expenses	4,584,871
4	Equipment	25,800
6	Total	<u>5,020,008</u>

144—*State Health Department—
Preventive Health*

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$ 353,303
2	Annual Increment	3,456
3	Current Expenses	1,067,724
4	Equipment	16,340
6	Total	<u>1,440,823</u>

145—*Department of Human Services—
Energy Assistance*

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$ 1,214,970
2	Annual Increment	46,000
3	Current Expenses	50,200
4	Social Security Matching	85,800
5	Public Employees Retirement Matching ..	114,000

6	Public Employees Health Insurance	100,000
7	Energy Assistance	17,574,141
8	Social Services	1,000,000
10	Total	\$ 20,185,111

146—*Department of Human Services—
Social Service*

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$ 9,418,810
2	Annual Increment	213,315
3	Current Expenses	3,644,500
4	Equipment	100,000
5	Social Security Matching	860,000
6	Public Employees Retirement Matching ..	785,000
7	Public Employees Health Insurance	670,000
8	Social Services	7,308,375
10	Total	\$ 23,000,000

1 **Sec. 10. Special revenue appropriations.**—There
2 is hereby appropriated for expenditure during the fiscal
3 year one thousand nine hundred eighty-seven, appropri-
4 ations made by general law from special revenue which
5 are not paid into the state fund as general revenue under
6 the provisions of chapter twelve, article two, section two
7 of the code: *Provided*, That none of the money so
8 appropriated by this section shall be available for
9 expenditure except in compliance with and in conform-
10 ity to the provisions of chapter twelve, articles two and
11 three, and chapter five-a, article two of the code, unless
12 the spending unit has filed with the state director of the
13 budget, the state auditor and the legislative auditor
14 prior to the beginning of each fiscal year:

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

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

1 **Sec. 11. State improvement fund appropria-**

2 tions.—Bequests or donations of nonpublic funds,
3 received by the governor on behalf of the state during
4 the fiscal year one thousand nine hundred eighty-seven,
5 for the purpose of making studies and recommendations
6 relative to improvements of the administration and
7 management of spending units in the executive branch
8 of state government, shall be deposited in the state
9 treasury in a separate account therein designated State
10 Improvement Fund.

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

1 **Sec. 12. Specific funds and collection accounts.—**
2 A fund or collection account, which by law is dedicated
3 to a specific use, is hereby appropriated in sufficient
4 amount to meet all lawful demands upon the fund or
5 collection account, and shall be expended according to
6 the provisions of chapter twelve, article three of the
7 code.

1 **Sec. 13. Appropriations for refunding erroneous**
2 **payment.—**Money that has been erroneously paid into
3 the state treasury is hereby appropriated out of the fund
4 into which it was paid, for refund to the proper person.

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

1 **Sec. 14. Sinking fund deficiencies.—**There is
2 hereby appropriated to the governor a sufficient amount
3 to meet any deficiencies that may arise in the mortgage

4 finance bond insurance fund of the West Virginia
5 housing development fund which is under the supervi-
6 sion and control of the state municipal bond commission
7 as provided by chapter thirty-one, article eighteen,
8 section twenty-b of the code, or in the funds of the state
9 municipal bond commission because of the failure of any
10 state agency for either general obligations or revenue
11 bonds to remit funds necessary for the payment of
12 interest and sinking fund requirements. The governor
13 is authorized to transfer from time to time such amounts
14 to the state municipal bond commission as may be
15 necessary for these purposes.

16 The state municipal bond commission shall reimburse
17 the state of West Virginia through the governor from
18 the first remittance collected from the West Virginia
19 housing development fund or from any state agency or
20 local taxing district for which the governor advanced
21 funds, with interest at the rate carried by the bonds for
22 security or payment of which the advance was made.

1 **Sec. 15. Appropriations to pay costs of publica-**
2 **tion of delinquent corporations.**—There is hereby
3 appropriated out of state fund, general revenue, out of
4 funds not otherwise appropriated, to be paid upon
5 requisition of the auditor and/or the governor, as the
6 case may be, a sum sufficient to pay the cost of
7 publication of delinquent corporations as provided by
8 chapter eleven, article twelve, sections eighty-four and
9 eighty-six of the code.

1 **Sec. 16. Appropriations for local governments.**—
2 There are hereby appropriated for payment to counties,
3 districts, and municipal corporations such amounts as
4 will be necessary to pay taxes due counties, districts,
5 and municipal corporations and which have been paid
6 into the treasury:

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

1 **Sec. 17. Total appropriations.**—Where only a total
 2 sum is appropriated to a spending unit, the total sum
 3 shall include personal services, current expenses and
 4 capital outlay, except as otherwise provided in TITLE
 5 I, Sec. 3.

1 **Sec. 18. General school fund.**—The balance of the
 2 proceeds of the general school fund remaining after the
 3 payment of the appropriations made by this act is
 4 appropriated for expenditure in accordance with
 5 chapter eighteen, article nine-a, section sixteen of the
 6 code.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expen-
 2 diture of the appropriations made by this act, except
 3 those appropriations made to the legislative and judicial
 4 branches of the state government are conditioned upon
 5 the compliance by the spending unit with the
 6 requirements of chapter five-a, article two of the code.

7 Where former spending units have been absorbed by
 8 or combined with other spending units by acts of this
 9 legislature, it is the intent of this act that reappropri-
 10 ations shall be to the succeeding or later spending unit
 11 created unless otherwise indicated.

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1 **Sec. 3. Constitutionality.**—If any part of this act is
 2 declared unconstitutional by a court of competent
 3 jurisdiction, its decision shall not affect any portion of
 4 this act which remains, but the remaining portion of this

* Clerk's Note: The Governor deleted all language appearing in Sec. 1, lines twelve through nineteen.

5 act which remains, but the remaining portion shall be
6 in full force and effect as if the portion declared
7 unconstitutional had never been a part of the act.

CHAPTER 30

(H. B. 2185—By Delegate Farley)

[Passed March 7, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and increasing the amounts specified as available for payment of claims against the state for the remainder of the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, and through the subsequent fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, as set forth in "Sec. 5. Awards for claims against the state." section, supplementing Enrolled Committee Substitute for House Bill No. 1082, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That "Sec. 5. Awards for claims against the state." section of Enrolled Committee Substitute for House Bill No. 1082, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented, amended and increased by adding to the amounts specified in such section, and with such total amounts to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 **Sec. 5. Awards for claims against the state.—**
3 There are hereby appropriated, for the remainder of the
4 fiscal year 1985-86 and to remain in effect until June
5 30, 1987, from the funds as designated, in the amounts
6 as specified and for the claimants as named in Enrolled
7 House Bill 1871, acts, Legislature, regular session, 1986,
8 crime victim compensation fund of \$529,478.25 for
9 payment of claims against the state.

10 There are hereby appropriated for the remainder of
11 the fiscal year 1985-86 and to remain in effect until June
12 30, 1987, from the funds as designated, in the amounts
13 as specified, and for the claimants as named in Enrolled
14 House Bill 1960 and 1961, acts, Legislature, regular
15 session, 1986 total general revenue funds of \$632,699.04,
16 state road funds of \$584,286.74, special revenue funds
17 of \$18,666.94 and federal funds of \$13,136.56 for
18 payments of claims against the state.

19 The purpose of this supplementary appropriation bill
20 is to supplement, amend and increase the amounts
21 specified as available for payment of claims against the
22 state for the remainder of the fiscal year ending June
23 thirtieth, one thousand nine hundred eighty-six, and
24 through the subsequent fiscal year ending June thir-
25 tieth, one thousand nine hundred eighty-seven, and with
26 such increased amounts being available for payment
27 and expenditure upon the effective date of this bill.

CHAPTER 31

(S. B. 719—Originating in the Senate Committee on Finance)

[Passed March 8, 1986; 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-seven, to the West Virginia Library Commission, Account No. 3500, supplementing Enrolled Committee Substitute for House Bill No. 1082, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated January 8, 1986, wherein is set forth the revenue estimates and financial statements for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated, after enactment of

Enrolled Committee Substitute for House Bill No. 1082, the budget bill for fiscal year 1986-87, a balance in the state fund, general revenue, available for further appropriation in respect of fiscal year 1986-87, 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. 3500, Enrolled Committee Substitute for House Bill No. 1082, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	EDUCATIONAL	
4	40— <i>West Virginia Library Commission</i>	
5	Acct. No. 3500	
6	7 Summersville Library Construction	\$ 300,000
7	11 Total	\$8,315,361

8 The purpose of this supplementary appropriation bill is
 9 to supplement this account in the budget bill for fiscal
 10 year 1986-87 by adding this new item and amount therefor
 11 to be available for expenditure in such fiscal year.

CHAPTER 32

(H. B. 2186—By Delegate Farley)

[Passed March 8, 1986; 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 the special revenue fund remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the Public Service Commission—Consumer Advocate, Account No. 8295, supplementing

Enrolled Committee Substitute for House Bill No. 1082, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, the Governor submitted to the Legislature an executive budget document, dated January 8, 1986, wherein is set forth the revenue estimates and financial statements in respect of special revenue accounts, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated, after enactment of Enrolled Committee Substitute for House Bill 1082, the budget bill for fiscal year 1986-87, a balance in such special revenue fund available for further appropriation for fiscal year 1986-87, 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. 8295, Enrolled Committee Substitute for House Bill 1082, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding the following sum to the designated item in such account:

1	TITLE 2. APPROPRIATIONS.	
2	Section 3. Appropriations from other funds.	
3	105— <i>Public Service Commission—Consumer Advocate</i>	
4	Acct. No. 8295	
5	TO BE PAID FROM SPECIAL REVENUE FUND	
6	1 Personal Services	\$ 5,000
7	11 Total	\$659,798

8 The purpose of this supplementary appropriation bill
 9 is to supplement and increase the "Personal Services"
 10 item in this account by \$5,000 and with such amount
 11 being available for expenditure in fiscal year 1986-87
 12 and after the effective date of this bill.

CHAPTER 33

(H. B. 1326—By Delegate Minard and Delegate Hoblitzell)

[Passed February 25, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reestablishing and continuing the division of archives and history of the department of culture and history.

Be it enacted by the Legislature of West Virginia:

That section seven-a, article one, 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 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-7a. Reestablishment of division of archives and history.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that the division of archives and history should
6 be continued and reestablished. Accordingly, notwith-
7 standing the provisions of section four, article ten,
8 chapter four of this code, the division of archives and
9 history shall continue to exist until the first day of July,
10 one thousand nine hundred eighty-seven.

CHAPTER 34

(Com. Sub. for S. B. 288—By Senator Tucker)

[Passed February 21, 1986; in effect ninety days from passage. Approved by the Governor.]

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

by financial institutions other than banks; circulation; and publication.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-10. Reports by financial institutions other than banks; circulation; publication.

1 Every financial institution other than banking institu-
2 tions shall furnish to the commissioner of banking, at
3 least twice each year and within fifteen days after his
4 request therefor, a statement, verified by its president or
5 secretary, and approved by three of its directors, in such
6 form as may be prescribed by the commissioner of bank-
7 ing, showing in detail the actual financial condition and
8 the amount of the assets and liabilities of such financial
9 institution, and shall furnish such other information as to
10 its business and affairs as the commissioner of banking
11 may require, which reports, in the same form in which
12 they are transmitted to the commissioner of banking, shall
13 be printed and circulated among all of the stockholders of
14 the financial institution: *Provided*, That if such financial
15 institution accepts deposits, or holds public savings in any
16 form or manner, its report shall also be published as a
17 Class I legal advertisement in compliance with the pro-
18 visions of article three, chapter fifty-nine of this code, and
19 the publication area for such publication shall be the
20 county in which the financial institution is located.

CHAPTER 35

(S. B. 237—By Senators R. Williams and Karras)

[Passed March 4, 1986; in effect ninety days from passage. Approved by the Governor.]

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

hundred thirty-one, as amended, relating to continuation of the West Virginia board of banking and financial institutions; appointment and qualifications of members; defining a quorum; disqualification of members; setting compensation; records, office space and staff assistance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

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

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

24 (b) The members of the board shall be appointed for
25 overlapping terms of six years, except that of the original
26 appointments, two members shall be appointed for a term

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

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

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

68 After having conducted a performance audit through its

69 joint committee on government operations, pursuant to
70 section nine, article ten, chapter four of this code, the
71 Legislature hereby finds and declares that the West
72 Virginia board of banking and financial institutions should
73 be continued and reestablished. Accordingly,
74 notwithstanding the provisions of section four, article ten,
75 chapter four of this code, the West Virginia board of
76 banking and financial institutions shall continue to exist
77 until the first day of July, one thousand nine hundred
78 ninety-two.

CHAPTER 36

(Com. Sub. for H. B. 1170—By Delegate Hamilton and Delegate Mastrantoni)

[Passed February 28, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article six by adding thereto a new section, designated section seven-a; to amend and reenact section three, article three, chapter thirty-one-a of said code; to amend and reenact section twelve, article eight of said chapter; to amend and reenact sections four and five, article eight-a of said chapter; and to further amend article eight-a of said chapter by adding thereto a new section, designated section seven, relating to the authority of building and loan associations to commence business; authorizing a federally insured savings and loan association or savings and loan holding company of another state to acquire a West Virginia building and loan association if the laws of such other state provide a reciprocal privilege to West Virginia building and loan associations; relating to accelerating the phase-in of branch banking; authorizing a bank or bank holding company of another state to acquire a West Virginia bank or bank holding company if the laws of such other state provide a

reciprocal privilege to West Virginia banks and bank holding companies; granting such reciprocal privilege to all states; authorizing the commissioner of banking to impose certain restrictions on a foreign bank holding company that has acquired a West Virginia bank or bank holding company; establishment of electronic data processing facilities and credit card processing facilities.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31. Corporations.

31A. Banks and Banking.

CHAPTER 31. CORPORATIONS.

ARTICLE 6. BUILDING AND LOAN ASSOCIATION.

- §31-6-7. Certificate of authority to commence business; expiration on failure to organize; no branches other than those already established allowed.
- §31-6-7a. Prohibition on the transaction of business by foreign savings and loan associations; acquisition of state building and loan association by foreign savings and loan association or savings and loan holding company; reciprocity; definitions; authority of commissioner of banking.

§31-6-7. Certificate of authority to commence business; expiration on failure to organize; no branches other than those already established allowed.

- 1 (a)(1) When the commissioner of banking has ap-

2 proved the bylaws, and the association shall file with the
3 commissioner of banking:

4 (A) A certified copy of the charter;

5 (B) Duly certified copies of the minutes of the meeting
6 of the shareholders at which directors were elected, and
7 of the first meeting of the directors at which officers
8 were elected; and

9 (C) A list of the names of the directors and all officers,
10 with their addresses.

11 (2) When the commissioner of banking is satisfied
12 that such association has complied with all requirements
13 of the law precedent to the exercise of the powers
14 imposed by law, and it appears that such association is
15 lawfully entitled to commence business, he shall give to
16 such association a certificate of authority under his hand
17 and official seal that such association is authorized to
18 commence business.

19 (b) No building and loan association shall transact
20 any business except such as is incidental or necessarily
21 preliminary to its organization until it has been
22 authorized by the commissioner of banking to do so. A
23 building and loan association failing to organize and
24 receive authority from the commissioner of banking to
25 commence business within one year from the date of
26 receiving its certificate of incorporation, shall cease to
27 exist, and such certificate shall be null and void.

28 (c) Except as may otherwise be provided for in section
29 seven-a of this article, no building and loan association
30 or savings and loan company organized and operating
31 under the provisions of this article shall engage in
32 business at any place other than:

33 (1) Its principal office in this state; or

34 (2) Branch offices, already established at the time of
35 the effective date of this section.

**§31-6-7a. Prohibition on the transaction of business by
foreign savings and loan associations; acqui-
sition of state building and loan association by
foreign savings and loan association or sav-**

ings and loan holding company; reciprocity; definitions; authority of commissioner of banking.

1 (a) Except as authorized in this section, no savings
2 and loan association organized under the laws of any
3 other state or having its principal place of business in
4 any other state may accept deposits or savings, or
5 transact any other business normally associated with the
6 operation of a savings and loan association of any kind,
7 in this state, other than the lending of money.

8 (b) Notwithstanding any other provision of this code
9 to the contrary, after the thirty-first day of December,
10 one thousand nine hundred eighty-seven, a West
11 Virginia building and loan association may acquire a
12 savings and loan association, savings bank or savings
13 and loan holding company having a principal place of
14 business in another state. A savings and loan association,
15 or a savings bank, the accounts of which are insured by
16 the Federal Savings and Loan Insurance Corporation
17 pursuant to the National Housing Act of 1934, as
18 amended, or savings and loan holding company with its
19 principal place of business in another state may acquire
20 a West Virginia building and loan association, if the
21 commissioner of banking determines, in his discretion,
22 that the laws of such other state in effect at the time
23 the application for the proposed acquisition in this state
24 is filed, permit a West Virginia building and loan
25 association to acquire a savings and loan association
26 having its principal place of business in such other state
27 on terms that are, on the whole, substantially no more
28 restrictive than those established under the provisions
29 of this section. A savings and loan association or savings
30 and loan holding company with its principal place of
31 business in another state may not acquire a West
32 Virginia building and loan association which has been
33 in existence and operating for less than two years:
34 *Provided*, That the commissioner of banking may
35 approve the acquisition of ownership or control of a
36 building and loan association which was newly organ-
37 ized under the provisions of this article, if such newly
38 chartered building and loan association was organized

39 solely for the purpose of facilitating the acquisition of
40 a building and loan association that has been continu-
41 ously operating for more than two years. If the law of
42 such other state restricts entry to that state by a West
43 Virginia building and loan association, then the commis-
44 sioner of banking may similarly limit the authority
45 granted by this section for savings and loan associations
46 or savings and loan holding companies with their
47 principal places of business located in that other state
48 to effect acquisitions in this state.

49 (c) Any savings and loan holding company proposing
50 to acquire a West Virginia building and loan association
51 pursuant to this section shall comply with, and be
52 governed by, the regulation of holding companies
53 provided for in 12 U.S.C. §1730a, and the regulations
54 promulgated pursuant thereto.

55 (d) No application for approval of an acquisition
56 pursuant to the authority granted by this section may
57 be approved by the commissioner of banking if the
58 commissioner determines that such approval would
59 cause the applicant savings and loan association or
60 savings and loan holding company to control aggregate
61 total deposits in this state exceeding twenty percent of
62 the total deposits held by all financial institutions
63 located in this state as reported in the most recently
64 available reports of condition or similar reports filed
65 with state or federal authorities.

66 (e) Unless the shareholders of the West Virginia
67 building and loan association to be acquired have
68 approved an amendment to its articles of incorporation
69 or code of regulations or comparable document that
70 provides that this subsection shall not apply to such
71 West Virginia building and loan association, any
72 acquisition to be made pursuant to the authority granted
73 by this section which will result in the acquiring of
74 nonresident savings and loan association or savings and
75 loan holding company directly or indirectly owning or
76 controlling the West Virginia building and loan associ-
77 ation must be authorized by the affirmative vote of the
78 holders of not less than two thirds of the voting power
79 of the West Virginia building and loan association to be

80 acquired.

81 (f) Any savings and loan association or savings and
82 loan holding company acquiring a West Virginia
83 building and loan association pursuant to the authority
84 granted by this section shall file with the commissioner
85 copies of the public portions of all regular and periodic
86 reports such savings and loan association or savings and
87 loan holding company is required to file with federal
88 regulators under section 13 or 15(d) of the "Securities
89 Exchange Act of 1934," 48 STAT. 894, 15 U. S. C. 78m
90 or 78o(d), as amended. These reports shall be filed with
91 the commissioner within fifteen days following the date
92 they are filed in final form with the applicable
93 regulator.

94 (g) As used in this section:

95 (1) "Acquire" or "acquisition" means any of the
96 following transactions or actions:

97 (A) A merger, consolidation or combination of, or
98 with, a savings and loan association, savings bank or a
99 savings and loan holding company;

100 (B) The acquisition of the direct or indirect ownership
101 or control of voting shares of a West Virginia building
102 and loan association if, after such acquisition, the
103 acquiring savings and loan association or savings and
104 loan holding company will directly or indirectly own or
105 control more than five percent of any class of voting
106 shares of the West Virginia building and loan associa-
107 tion, unless the commissioner determines, in his discre-
108 tion, that the nature of the acquisition is such that it
109 should not be subject to the limitations of this section;

110 (C) The direct or indirect acquisition of all or
111 substantially all of the assets of a West Virginia
112 building and loan association by a savings and loan
113 association or a savings and loan holding company of
114 another state; or

115 (D) The taking of any other action by a savings and,
116 loan association or a savings and loan holding company
117 that results in the direct or indirect control of a West
118 Virginia building and loan association.

119 (2) "Principal place of business" means, as to a
120 savings and loan holding company, the state or jurisdic-
121 tion in which the total deposits of all direct or indirect
122 subsidiaries of the savings and loan holding company
123 and any other company that has control of the savings
124 and loan holding company are the largest, as shown in
125 the most recent report of condition or similar report
126 filed by such subsidiaries with state or federal author-
127 ities; and, as to a savings and loan association, the state
128 or jurisdiction in which its total deposits and those of
129 all its subsidiaries, if any, are the largest, as shown in
130 the most recent report of condition or similar report
131 filed by the savings and loan association and its
132 subsidiaries with state or federal authorities.

133 (3) "Savings and loan holding company" means any
134 company which is a savings and loan holding company
135 as defined in the federal savings and loan holding
136 company act, 12 U.S.C. §1730a(a)(1) (D), (E) or (F), or
137 which will become such an approved savings and loan
138 holding company prior to or upon completion of the
139 acquisition to be made pursuant to the authority granted
140 by this section.

141 (4) "West Virginia building and loan association"
142 means a building and loan association or a savings and
143 loan company, the accounts of which are insured by the
144 Federal Savings and Loan Insurance Corporation,
145 pursuant to the National Housing Act of 1934, as
146 amended and chartered under the provisions of this
147 article.

148 (h)(1) When the commissioner of banking considers it
149 necessary or appropriate, he may examine any savings
150 and loan association or a savings and loan holding
151 company that has acquired or has an application
152 pending to acquire a West Virginia building and loan
153 association pursuant to the authority granted by
154 subsection (b) of this section. The cost of an examination,
155 if in excess of the initial fee, shall be assessed against
156 and paid by the savings and loan association or savings
157 and loan holding company examined. The commissioner
158 may request the savings and loan association or savings
159 and loan holding company to be examined pursuant to

160 this subsection to advance the estimated cost of such
161 examination.

162 (2) The commissioner may enter into cooperative
163 agreements with other state and federal savings and
164 loan regulatory authorities to facilitate the examination
165 of any savings and loan association or savings and loan
166 holding company that has acquired or has an application
167 pending to acquire a West Virginia building and loan
168 association pursuant to the authority granted by
169 subsection (b) of this section. The commissioner may
170 accept reports of examinations and other records from
171 such other authorities in lieu of conducting his own
172 examination of such savings and loan association or
173 savings and loan holding companies. The commissioner
174 may take any action jointly with other regulatory
175 agencies having concurrent jurisdiction over such
176 savings and loan association or savings and loan holding
177 companies or may take action independently in order to
178 carry out his responsibilities under subsection (b) of this
179 section.

180 (3) When the commissioner considers it necessary, he
181 may require any savings and loan association or savings
182 and loan holding company that has acquired a West
183 Virginia building and loan association pursuant to the
184 authority granted by subsection (b) of this section to
185 submit such reports to the commissioner as he deter-
186 mines to be necessary or appropriate for the purpose of
187 carrying out his responsibilities.

CHAPTER 31A. BANKS AND BANKING.

Article

- 3. Board of Banking and Financial Institutions.
- 8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.
- 8A. Acquisition of Bank Shares.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

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

- 1 (a) Subject to the provisions of subsections (e), (f), (g)
- 2 and (h) of this section and to the provisions of subsection

3 (j), section twelve, article eight of this chapter, notice
4 and hearing shall be provided in advance of the entry
5 of any order by the board.

6 (1) Such notice shall be given to the financial institu-
7 tion or person with respect to whom the hearing is to
8 be conducted in accordance with the provisions of
9 section two, article seven, chapter twenty-nine-a of this
10 code, and such hearing and the administrative proce-
11 dures in connection therewith shall be governed by all
12 of the provisions of article five, chapter twenty-nine-a of
13 this code, and shall be held at a time and place set by
14 the board, but shall not be held less than ten or more
15 than thirty days after such notice is given. A hearing
16 may be continued by the board on its own motion or for
17 good cause shown.

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

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

31 (c) In the case of an application for the board's
32 approval to incorporate and organize a banking institu-
33 tion in this state, as provided in subdivision (3),
34 subsection (b), section two of this article, the board shall,
35 upon receipt of any such application provide notice to
36 all banking institutions, which in the manner hereinaf-
37 ter provided, have requested notice of any such action.
38 The request by any such banking institution to receive
39 such notice shall be in writing and shall request the
40 board to notify it of the receipt by the board of any
41 application to incorporate and organize a banking
42 institution in this state. A banking institution may,

43 within ten days after receipt of such notice, file a
44 petition to intervene and shall, if it so files such petition,
45 thereupon become a party to any hearing relating
46 thereto before the board.

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

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

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

72 (g) Whenever the board shall find that the financial
73 condition of a state banking institution or national
74 banking association constitutes an imminent peril to its
75 depositors, savings account holders, other customers or
76 creditors, it may forthwith without compliance with the
77 provisions of section six or seven, article four of this
78 chapter and without notice or hearing enter an order
79 approving or disapproving an application to incorporate
80 a state banking institution which is being formed to
81 purchase the business and assets or assume the liabil-
82 ities of, or both, or merge or consolidate with, such state

83 banking institution or national banking institution the
84 financial condition of which constitutes an imminent
85 peril to its depositors, savings account holders, other
86 customers or creditors. Immediately upon the entry of
87 such order, certified copies thereof shall be served upon
88 all persons affected thereby and upon demand such
89 persons shall be entitled to a hearing thereon at the
90 earliest practicable time.

91 (h) Whenever the board shall find that the financial
92 condition of a state banking institution, national
93 association or bank holding company constitutes an
94 imminent peril to its depositors, savings account
95 holders, other customers or creditors, it may forthwith
96 without compliance with the provisions of section four
97 or section seven, article eight-a of this chapter and
98 without notice of hearing enter an order approving or
99 disapproving an application by an existing bank holding
100 company or by an organizing bank holding company to
101 acquire in whole or in part, directly or indirectly, such
102 state banking institution, national association or bank
103 holding company. Immediately upon the entry of such
104 order, certified copies thereof shall be served upon all
105 persons affected thereby at the earliest practicable time.

106 (i) Definitions:

107 (1) The term "imminent peril" means that, because
108 the banking institution or bank holding company is
109 insolvent or about to be insolvent, or there is a proba-
110 bility that the banking institution will not be able to pay
111 its debts when they become due.

112 (2) A banking institution or bank holding company is
113 "about to be insolvent" when it would be unable to meet
114 the demands of its depositors or is clearly unable,
115 without impairment of capital, by sale of assets or
116 lawful borrowings or otherwise, to realize sufficient
117 liquid assets to pay such debts for which payment is
118 likely, in the immediate future, to be due and demanded
119 in the ordinary course of business.

120 (3) A banking institution or bank holding company is
121 "insolvent" when it is unable to pay its debts to its
122 depositors and other creditors in the ordinary and usual

123 course of business.

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

§31A-8-12. Procedure for authorization of branch banks; penalties for violation of section.

1 (a) No banking institution shall engage in business at
2 any place other than at its principal office in this state,
3 at a branch bank in this state permitted by this section
4 as a customer bank communication terminal permitted
5 by section twelve-b of this article or at any loan
6 origination office permitted by section twelve-c of this
7 article.

8 Any banking institution which on January one, one
9 thousand nine hundred eighty-four, was authorized to
10 operate an off-premise walk-in or drive-in facility,
11 pursuant to the law then in effect, may, as of the seventh
12 day of June, one thousand nine hundred eighty-four,
13 operate such facility as a branch bank and it shall not
14 be necessary, for the continued operation of such branch
15 bank, to obtain additional approvals, notwithstanding
16 the provisions of subsection (d) of this section and
17 subdivision (6), subsection (b), section two, article three
18 of this chapter.

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

29 (c) A banking institution may establish branch banks
30 either by:

31 (1) The construction, lease or acquisition of branch
32 bank facilities as follows:

33 (A) After the seventh of June, one thousand nine
34 hundred eighty-four, within the county in which that

35 banking institution's principal office is located or within
36 the county in which that banking institution had prior
37 to January first, one thousand nine hundred eighty-four,
38 established a branch bank, pursuant to subdivision (2)
39 of this subsection; and

40 (B) After the thirty-first of December, one thousand
41 nine hundred eighty-six, within any county in this state;
42 or

43 (2) The purchase of the business and assets and
44 assumption of the liabilities of, or merger or consolida-
45 tion with, another banking institution.

46 (d) Notwithstanding any other provision of this
47 chapter to the contrary, subject to and in furtherance
48 of the board's authority under the provisions of subdivi-
49 sion (6), subsection (b), section two, article three of this
50 chapter, and subsection (g) of this section, the board may
51 approve or disapprove the application of any state
52 banking institution to establish a branch bank.

53 (e) The principal office of a banking institution as of
54 the seventh day of June, one thousand nine hundred
55 eighty-four, shall continue to be the principal office of
56 such banking institution for purposes of establishing
57 branch banks under this section, notwithstanding any
58 subsequent change in the location of such banking
59 institution's principal office.

60 (f) Any banking institution which is authorized to
61 establish branch banks pursuant to this section may
62 provide the same banking services and exercise the
63 same powers at each such branch bank as may be
64 provided and exercised at its principal banking house.

65 (g) The board shall, upon receipt of any application
66 to establish a branch bank, provide notice of such
67 application to all banking institutions. A banking
68 institution may, within ten days after receipt of such
69 notice, file a petition to intervene and shall, if it so files
70 such petition, thereupon become a party to any hearing
71 relating thereto before the board.

72 (h) The commissioner shall prescribe the form of the
73 application for a branch bank and shall collect an

74 examination and investigation fee of one thousand
75 dollars for each filed application for a branch bank that
76 is to be established by the construction, lease or
77 acquisition of a branch bank facility, and two thousand
78 five hundred dollars for a branch bank that is to be
79 established by the purchase of the business and assets
80 and assumption of the liabilities of, or merger or
81 consolidation with another banking institution. The
82 board shall complete the examination and investigation
83 within ninety days from the date on which such
84 application and fee are received, unless the board
85 request in writing additional information and disclo-
86 sures concerning the proposed branch bank from the
87 applicant banking institution, in which event such
88 ninety-day period shall be extended for an additional
89 period of thirty days plus the number of days between
90 the date of such request and the date such additional
91 information and disclosures are received.

92 (i) Upon completion of the examination and investiga-
93 tion with respect to such application, the board shall, if
94 a hearing be required pursuant to subsection (j) of this
95 section, forthwith give notice and hold a hearing
96 pursuant to the following provisions:

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

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

110 (3) After such hearing and consideration of all the
111 testimony and evidence, the board shall make and enter
112 an order approving or disapproving the application,
113 which order shall be accompanied by findings of fact

114 and conclusions of law as specified in section three,
115 article five, chapter twenty-nine-a of this code, and a
116 copy of such order and accompanying findings and
117 conclusions shall be served upon all parties to such
118 hearing, and their attorneys of record, if any.

119 (j) No state banking institution may establish a
120 branch bank until the board, following an examination,
121 investigation, notice and hearing, enters an order
122 approving an application for that branch bank: *Pro-*
123 *vided*, That no such hearing shall be required with
124 respect to any application to establish a branch bank
125 which is approved by the board unless a banking
126 institution has timely filed a petition to intervene
127 pursuant to subsection (g) of this section. The order shall
128 be accompanied by findings of fact that:

129 (1) Public convenience and advantage will be pro-
130 moted by the establishment of the proposed branch
131 bank;

132 (2) Local conditions assure reasonable promise of
133 successful operation of the proposed branch bank and of
134 those banks and branches thereof already established in
135 the community;

136 (3) Suitable physical facilities will be provided for the
137 branch bank;

138 (4) The applicant state-chartered banking institution
139 satisfies such reasonable and appropriate requirements
140 as to sound financial condition as the commissioner or
141 board may from time to time establish by regulation;

142 (5) The establishment of the proposed branch bank
143 would not result in a monopoly, nor be in furtherance
144 of any combination or conspiracy to monopolize the
145 business of banking in any section of this state; and

146 (6) The establishment of the proposed branch bank
147 would not have the effect in any section of the state of
148 substantially lessening competition, nor tend to create a
149 monopoly or in any other manner be in restraint of
150 trade, unless the anticompetitive effects of the establish-
151 ment of that proposed branch bank are clearly out-
152 weighed in the public interest by the probable effect of

153 the establishment of the proposed branch bank in
154 meeting the convenience and needs of the community to
155 be served by that proposed branch bank.

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

165 (l) Pursuant to the resolution of its board of directors
166 and with the prior written approval of the commis-
167 sioner, a state banking institution may discontinue the
168 operation of a branch bank upon at least thirty days'
169 prior public notice given in such form and manner as
170 the commissioner prescribes.

171 (m) Any violation of any provision of this section shall
172 constitute a misdemeanor offense punishable by appli-
173 cable penalties as provided in section fifteen, article
174 eight of this chapter.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§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-7. Acquisition of state bank or holding company by foreign bank;
reciprocity; authority of the commissioner and of the board.

§31A-8A-4. Acquisition of bank shares; when prior notification of board necessary; exemptions.

1 (a) Unless an order approving such action has been
2 entered by the board, it is unlawful, prior to one
3 hundred twenty days following the date of the submis-
4 sion to the board of complete, true and accurate copies
5 of the reports required under federal laws or regulations
6 pursuant to Title 12, United States Code, §§1841-1850
7 (being the act of Congress entitled the Bank Holding

8 Company Act of 1956, as amended), and the payment of
9 an examination and investigation fee to the board of two
10 thousand five hundred dollars:

11 (1) For any action to be taken that causes any
12 company to become a bank holding company;

13 (2) For any action to be taken that causes any bank
14 to become a subsidiary of a bank holding company;

15 (3) For any bank holding company to acquire direct
16 or indirect ownership or control of any shares of any
17 bank if, after such acquisition, such company will
18 directly or indirectly own or control more than five
19 percent of the voting shares of such bank;

20 (4) For any bank holding company or subsidiary
21 thereof, other than a bank, to acquire all or substantially
22 all of the assets of a bank;

23 (5) For any bank holding company to merge or
24 consolidate with any other bank holding company; or

25 (6) For any bank holding company to take any action
26 which would violate the Federal Bank Holding Com-
27 pany Act.

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

30 (1) Shares acquired by a bank:

31 (A) In good faith in a fiduciary capacity, except where
32 shares are held under a trust that constitutes a company
33 as defined in section two of this article and except as
34 provided in subdivisions (2) and (3), subsection (b),
35 section three of this article; or

36 (B) In the regular course of securing or collecting a
37 debt previously contracted in good faith, but any shares
38 acquired after the seventh day of June, one thousand
39 nine hundred eighty-four, in securing or collecting any
40 such previously contracted debt shall be disposed of
41 within a period of five years from the date on which they
42 were acquired; or

43 (2) Additional shares acquired by a bank holding
44 company in a bank in which such bank holding company

45 owned or controlled a majority of the voting shares prior
46 to such acquisition. For the purpose of the preceding
47 sentence, bank shares acquired after the seventh day of
48 June, one thousand nine hundred eighty-four, shall not
49 be deemed to have been acquired in good faith in a
50 fiduciary capacity if the acquiring bank or company has
51 sole discretionary authority to exercise voting rights
52 with respect thereto, but in such instances acquisitions
53 may be made without prior notice to the board if the
54 board, upon notice and submission of information in
55 form and content as it shall approve, filed within ninety
56 days after the shares are acquired, approved retention
57 or, if retention is disapproved, the acquiring bank
58 disposes of the shares or its sole discretionary voting
59 rights within five years after issuance of the order of
60 disapproval.

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

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

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

83 (3) Taking into consideration the financial and
84 managerial resources and further prospects of the

85 company or companies and the banks concerned, the
86 action would be contrary to the best interests of the
87 shareholders or customers of the bank whose shares are
88 affected by such action.

89 (d) Notwithstanding any other provision of law, no
90 bank holding company, or any other company, shall
91 establish, acquire or control any banking institution as
92 defined in section three of this article, when said
93 banking institution does not both (i) accept deposits that
94 the depositor has a legal right to withdraw on demand
95 and (ii) engage in the business of making commercial
96 loans.

97 (e) Nothing contained in this section shall affect the
98 obligation of any person or company to comply with the
99 provisions of any order of any court or the commissioner
100 entered prior to the seventh day of June, one thousand
101 nine hundred eighty-four.

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

1 (a) For the purposes of this section, other than
2 subsection (f), a "bank holding company" shall include,
3 in addition to a bank holding company defined in
4 subdivision (1), subsection (a), section three of this
5 article, any other bank holding company subject to
6 regulation under Title 12, United States Code, §§1841-
7 1850 (being the act of Congress entitled the Bank
8 Holding Company Act of 1956, as amended), which has
9 acquired or established a place of business in this state
10 or a subsidiary which has a place of business in this
11 state.

12 (b) On the first day of July, one thousand nine
13 hundred eighty-two, and annually thereafter on dates
14 established by the commissioner, each bank holding
15 company shall register with the commissioner on forms
16 provided or prescribed by him, which shall include such
17 information with respect to the financial condition,
18 operation, management and intercompany relationships
19 of the bank holding company and its subsidiaries and
20 related matters as the commissioner may deem neces-
21 sary or appropriate to carry out the purposes of this

22 article.

23 (c) The commissioner is authorized to issue such
24 regulations and orders as may be necessary to enable
25 him or the board to administer and carry out the
26 purposes of this article and prevent evasions thereof.

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

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

46 (f) The commissioner of banking shall charge and
47 collect from each bank holding company and pay into
48 a special revenue account in the state treasury for the
49 department of banking an annual assessment payable on
50 the last day of January computed upon the total deposits
51 in this state of the bank holding company contained in
52 the consolidated financial statement as of the last
53 business day in December of the previous year as is set
54 out in section eight, article two, chapter thirty-one-a of
55 this code. The payment of such registration fee shall be
56 accompanied by a report on forms prescribed by the
57 commissioner.

**§31A-8A-7. Acquisition of state bank or holding company
by foreign bank; reciprocity; authority of
the commissioner and of the board.**

1 (a) Except as authorized in this section, no banking
2 institution incorporated under the laws of any other
3 state or having its principal place of business in any
4 other state may receive deposits or transact any banking
5 business of any kind in this state other than the lending
6 of money.

7 (b) Upon enactment, a bank holding company with its
8 principal place of business in another state may
9 establish electronic data processing facilities and credit
10 card processing facilities in West Virginia.

11 (c) After the thirty-first day of December, one
12 thousand nine hundred eighty-seven, a bank holding
13 company with its principal place of business in another
14 state may acquire a West Virginia bank or West
15 Virginia bank holding company if the board determines
16 in its discretion that the laws of such other state, as in
17 effect at the time the application referred to in
18 subsection (d) of this section, permits a West Virginia
19 bank holding company to acquire a bank or bank
20 holding company having its principal place of business
21 in such other state on terms that are, on the whole,
22 substantially no more restrictive than those established
23 under this section and if the West Virginia bank has,
24 or all subsidiaries of the West Virginia bank holding
25 company to be acquired have, been in operation for two
26 years or more. The board may approve the acquisition
27 of all or substantially all of the shares of a bank newly
28 organized solely for the purpose of facilitating the
29 acquisition of a bank that has been in existence and
30 continuously operating for at least two years. If the law
31 of such other state restricts entry by West Virginia bank
32 holding companies to that state, then the board may
33 similarly limit the authority granted by this section for
34 bank holding companies with their principal places of
35 business located in that state.

36 In no case may this section be construed to permit the
37 merger, combination or consolidation of a West Virginia
38 bank with or into a bank the principal place of business
39 of which is not in this state.

40 (d) Any bank holding company proposing to acquire

41 a West Virginia bank or West Virginia bank holding
42 company pursuant to this section shall comply with, and
43 be governed by, the procedures and requirements
44 contained in section four of this article.

45 (e) No application for approval of an acquisition
46 pursuant to the authority granted by this section may
47 be approved by the board if the board determines that
48 such approval would cause the applicant bank holding
49 company to control aggregate total deposits in this state
50 exceeding twenty percent of the total deposits held by
51 all financial institutions located in this state as reported
52 in the most recently available reports of condition or
53 similar reports filed with state or federal authorities.

54 (f) Unless the shareholders of the West Virginia bank
55 or West Virginia bank holding company to be acquired
56 have approved an amendment to its articles of incorpo-
57 ration or code of regulations or comparable document
58 that provides that this subsection shall not apply to such
59 West Virginia bank or West Virginia bank holding
60 company, any acquisition to be made pursuant to the
61 authority granted by this section which will result in the
62 acquiring nonresident bank holding company directly or
63 indirectly owning or controlling the West Virginia bank
64 or West Virginia bank holding company must be
65 authorized by the affirmative vote of the holders of not
66 less than two thirds of the voting power of the West
67 Virginia bank or West Virginia bank holding company
68 to be acquired.

69 (g) Any bank holding company acquiring a bank or
70 bank holding company pursuant to the authority
71 granted by this section shall file with the commissioner
72 copies of the public portions of all regular and periodic
73 reports such bank holding company is required to file
74 with federal regulators and under section 13 or 15(d) of
75 the "Securities Exchange Act of 1934," 48 STAT. 894,
76 15 U.S.C. 78m or 78o(d), as amended. These reports
77 shall be filed with the commissioner within fifteen days
78 following the date they are filed in final form with the
79 applicable regulator.

80 (h) As used in this section:

81 (1) "Acquire" or "acquisition" means any of the
82 following transactions or actions:

83 (A) A merger, consolidation or combination of, or
84 with, a West Virginia bank holding company;

85 (B) The acquisition of the direct or indirect ownership
86 or control of voting shares of a West Virginia bank
87 holding company or a West Virginia bank if, after such
88 acquisition, the acquiring bank holding company will
89 directly or indirectly own or control more than five
90 percent of any class of voting shares of the West
91 Virginia bank or West Virginia bank holding company
92 unless the board determines, in its discretion, that the
93 nature of the acquisition is such that it should not be
94 subject to the limitations of this section;

95 (C) The direct or indirect acquisition of all or
96 substantially all of the assets of a West Virginia bank
97 or West Virginia bank holding company by a bank
98 holding company; or

99 (D) The taking of any other action by a bank holding
100 company that results in the direct or indirect control of
101 a West Virginia bank or West Virginia bank holding
102 company.

103 (2) "Bank holding company" means any company
104 which is a bank holding company as defined in this
105 article, or which will become such an approved bank
106 holding company prior to or upon completion of the
107 acquisition to be made pursuant to the authority granted
108 by this section.

109 (3) "Electronic data processing facilities and credit
110 card processing facilities" means facilities established
111 only for the purpose of processing accounts and or
112 processing transactions relating to the issuance of credit
113 cards.

114 (4) "Principal place of business" means, as to a bank
115 holding company, the state or jurisdiction in which the
116 total deposits of all direct and indirect banking subsi-
117 diaries of the bank holding company and any other
118 company that has control of the bank holding company
119 are the largest, as shown in the most recent report of

120 condition or similar report filed by such banking
121 subsidiaries with state or federal authorities; and, as to
122 a bank, the state or jurisdiction in which its total
123 deposits and those of all its banking subsidiaries, if any,
124 are the largest, as shown in the most recent report of
125 condition or similar report filed by the bank and its
126 banking subsidiaries with state or federal authorities.

127 (5) "West Virginia bank" means a bank incorporated
128 under the laws of this state or a national banking
129 association the principal place of business of which is in
130 this state.

131 (6) "West Virginia bank holding company" means a
132 bank holding company which owns or controls one or
133 more West Virginia banks and has its principal place
134 of business in this state.

135 (i) (1) When the commissioner of banking considers it
136 necessary or appropriate, he may examine any bank
137 holding company that has acquired or has an application
138 pending to acquire a West Virginia bank or West
139 Virginia bank holding company pursuant to the author-
140 ity granted by subsection (c) of this section. The cost of
141 an examination if in excess of the initial fee, shall be
142 assessed against and paid by the bank holding company
143 examined. The commissioner may request the bank
144 holding company to be examined pursuant to this
145 subsection to advance the estimated cost of such
146 examination.

147 (2) The commissioner may enter into cooperative
148 agreements with other state and federal bank regula-
149 tory authorities to facilitate the examination of any bank
150 holding company that has acquired or has an application
151 pending to acquire a West Virginia bank or West
152 Virginia bank holding company pursuant to the author-
153 ity granted by subsection (c) of this section. The
154 commissioner may accept reports of examinations and
155 other records from such other authorities in lieu of
156 conducting his own examination of such bank holding
157 companies. The commissioner may take any action
158 jointly with other regulatory agencies having concurrent
159 jurisdiction over such bank holding companies or may

160 take action independently in order to carry out his
161 responsibilities under subsection (c) of this section.

162 (3) When the commissioner considers it necessary, he
163 may require any bank holding company that has
164 acquired a West Virginia bank or West Virginia bank
165 holding company pursuant to the authority granted by
166 subsection (c) of this section to submit such reports to
167 the commissioner as he determines to be necessary or
168 appropriate for the purpose of carrying out his respon-
169 sibilities.

CHAPTER 37

(Com. Sub. for S. B. 536—By Mr. Tonkovich, Mr. President and Senator Harman)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating nonintoxicating beer act; declaration of legislative findings, policy and intent; construction; definitions; office of nonintoxicating beer commissioner; deputies and agents; bonds; administration and enforcement expenses; state license required; alcoholic content of beer manufactured for sale without state; license in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; license not transferable; change of location; form of application for license; fee and bond; refusal of license; amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; brewer's license for foreign corporation; application; bond; contents of application; limitations; annual license fee; renewal; suspension; license fee for sales representatives; special license for festivals and fairs; license fee and application; license subject to provisions of article; exceptions; bond of brewer, distributor and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney; barrel tax on nonintoxicating beer; collection of unpaid license tax; records of brewer, manufacturer or distributor; collection of

unpaid tax and penalty; restrictions on nonresident brewers, manufacturers and distributors; container labeling; unlawful acts of licensees; criminal penalties; unlawful acts of persons; criminal penalties; unlawful acts of brewers or manufacturers; criminal penalties; requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section; powers of commissioner; rules, regulations or orders; revocation or suspension of license; hearing on revocation or suspension of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; reissuance of license after revocation; municipal license tax; revenue collected and paid to state treasurer; expense of administration; expiration date of existing licenses; and when operable.

Be it enacted by the Legislature of West Virginia:

That article sixteen, 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 16. NONINTOXICATING BEER.

- §11-16-1. Short title.
- §11-16-2. Declaration of legislative findings; policy and intent; construction.
- §11-16-3. Definitions.
- §11-16-4. Office of nonintoxicating beer commissioner; deputies and agents; bonds; administration and enforcement expenses.
- §11-16-5. State license required; alcoholic content of beer manufactured for sale without state.
- §11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed.
- §11-16-7. License not transferable; change of location.
- §11-16-8. Form of application for license; fee and bond; refusal of license.
- §11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted.
- §11-16-10. Brewer's license for foreign corporation; application; bond; contents of application; limitations; annual license fee; renewal; suspension; license fee for sales representatives.
- §11-16-11. Special license for festivals and fairs; license fee and application; license subject to provisions of article; exceptions.
- §11-16-12. Bond of brewer, distributor and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.

- §11-16-13. Barrel tax on nonintoxicating beer.
- §11-16-14. Collection of unpaid license tax.
- §11-16-15. Records of brewer, manufacturer or distributor; collection of unpaid tax and penalty.
- §11-16-16. Restrictions on nonresident brewers, manufacturers and distributors.
- §11-16-17. Container labeling.
- §11-16-18. Unlawful acts of licensees; criminal penalties.
- §11-16-19. Unlawful acts of persons; criminal penalties.
- §11-16-20. Unlawful acts of brewers and manufacturers; criminal penalties.
- §11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.
- §11-16-22. Powers of the commissioner; rules, regulations or orders.
- §11-16-23. Revocation or suspension of license.
- §11-16-24. Hearing on revocation or suspension of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee.
- §11-16-25. Reissuance of license after revocation.
- §11-16-26. Municipal license tax.
- §11-16-27. Revenue collected and paid to state treasurer; expense of administration.
- §11-16-28. Expiration date of existing licenses; when provisions operable.
- §11-16-29. Severability.

§11-16-1. Short title.

- 1 This article shall be known and may be cited as "The
- 2 Nonintoxicating Beer Act."

§11-16-2. Declaration of legislative findings, policy and intent; construction.

- 1 It is hereby found by the Legislature and declared to be
- 2 the policy of this state that it is in the public interest to
- 3 regulate and control the manufacture, sale, distribution,
- 4 transportation, storage and consumption of the beverages
- 5 regulated by this article within this state and that,
- 6 therefore, the provisions of this article are a necessary,
- 7 proper and valid exercise of the police powers of this state
- 8 and are intended for the protection of the public safety,
- 9 welfare, health, peace and morals and are further intended
- 10 to eliminate, or to minimize to the extent practicable, the
- 11 evils attendant to the unregulated, unlicensed and unlawful
- 12 manufacture, sale, distribution, transportation, storage
- 13 and consumption of such beverages and are further
- 14 intended to promote temperance in the use and

15 consumption thereof. In order to further these ends, the
16 provisions of this article and of the rules and regulations
17 promulgated pursuant thereto, shall be construed so that
18 the accomplishment of these stated purposes may be
19 effectuated.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context
2 clearly requires differently:

3 (1) "Brewer" or "manufacturer" shall mean any person,
4 firm, association, partnership or corporation
5 manufacturing, brewing, mixing, concocting, blending,
6 bottling or otherwise producing or importing or
7 transshipping from a foreign country nonintoxicating beer
8 for sale at wholesale to any licensed distributor.

9 (2) "Commissioner" shall mean the West Virginia
10 nonintoxicating beer commissioner.

11 (3) "Distributor" shall mean and include any person
12 jobbing or distributing nonintoxicating beer to retailers at
13 wholesale and whose warehouse and chief place of business
14 shall be within this state.

15 (4) "Nonintoxicating beer" shall mean all cereal malt
16 beverages or products of the brewing industry commonly
17 referred to as beer, lager beer, ale and all other mixtures and
18 preparations produced by the brewing industry, including
19 malt coolers and containing at least one half of one percent
20 alcohol by volume, but not more than four and two-tenths
21 percent of alcohol by weight, or six percent by volume,
22 whichever is greater, all of which are hereby declared to be
23 nonintoxicating and the word "liquor" as used in chapter
24 sixty of this code shall not be construed to include or
25 embrace nonintoxicating beer nor any of the beverages,
26 products, mixtures or preparations included within this
27 definition.

28 (5) "Original container" shall mean the container used
29 by the brewer at the place of manufacturing, bottling or
30 otherwise producing nonintoxicating beer for sale at
31 wholesale.

32 (6) "Person" shall mean and include an individual, firm,
33 partnership, limited partnership, association or
34 corporation.

35 (7) "Retailer" shall mean any person selling, serving or

36 otherwise dispensing nonintoxicating beer and all products
37 regulated by this article, including, but not limited to, any
38 malt cooler, at his established and licensed place of
39 business.

**§11-16-4. Office of nonintoxicating beer commissioner;
deputies and agents; bonds; administration and
enforcement expenses.**

1 (a) The office of the independent administrator known
2 as the "West Virginia Nonintoxicating Beer Commissioner"
3 is hereby continued and the administration of this article is
4 vested in and shall be exercised by said commissioner, to
5 whom is hereby given all necessary power and authority in
6 the premises.

7 All acts heretofore performed by the tax commissioner
8 under previous proceedings of this article are hereby again
9 ratified and confirmed, and the commissioner shall succeed
10 to the same position previously maintained by the tax
11 commissioner in all proceedings and official acts instituted
12 and perfected under the provisions of this article prior to
13 the creation of the office of commissioner in the year one
14 thousand nine hundred thirty-seven. The commissioner
15 shall be appointed by the governor with the advice and
16 consent of the Senate. Except as may be provided in section
17 two-a, article seven, chapter six of this code, the term of
18 office for such commissioner shall be six years from the date
19 of his or her appointment and until his or her successor shall
20 have been appointed and qualified. The commissioner shall
21 receive the annual salary as provided in said section two-a,
22 article seven, chapter six of this code.

23 (b) The commissioner, at the time of his or her
24 appointment and qualification, shall be a citizen of the
25 United States and a resident of the state of West Virginia
26 and shall have been a qualified voter in the state for a period
27 of at least one year next preceding his or her appointment
28 and shall be not less than thirty years of age. No
29 commissioner, during his or her period of service as such,
30 shall hold any other office under the laws of this state or of
31 the United States.

32 (c) The commissioner, with the consent of the governor,
33 shall appoint two deputy commissioners both of whom shall
34 have the same qualifications as are required of the

35 commissioner. One deputy commissioner shall be in charge
36 of administration and the other deputy commissioner shall
37 be in charge of law enforcement. The deputy commissioner
38 of administration, in the absence of the commissioner, shall
39 exercise all the powers of the commissioner and generally
40 shall exercise such powers as are delegated to him or her by
41 the commissioner. The deputy commissioner of law
42 enforcement shall be, in the absence of the commissioner,
43 responsible for and exercise all the powers of the
44 commissioner in respect to law enforcement and regulation
45 and shall generally exercise such powers as are delegated to
46 him or her by the commissioner.

47 (d) Before entering upon the duties of their respective
48 offices, the commissioner and the deputy commissioner
49 shall execute and file with the state treasurer a penal bond
50 in such sum as shall be fixed by the governor, but the
51 amount of such bond shall not be less than five thousand
52 dollars. Penal bonds in such penal sums as shall be fixed by
53 the governor likewise shall be executed and filed with the
54 state treasurer by such employees of the commissioner as
55 the commissioner, with the consent of the governor, shall
56 prescribe. No such bond of any employee handling moneys
57 collected by the commissioner under the provisions of this
58 article shall be less than five thousand dollars. All such
59 bonds shall be payable to the state of West Virginia and
60 shall be conditioned for the faithful performance of the
61 duties imposed by law or lawful authority upon the
62 commissioner, deputy commissioners or employees, and
63 further conditioned that the person bonded will not
64 knowingly violate the provisions of any act, rule or
65 regulation relating to the manufacture, sale, distribution or
66 transportation of alcohol, alcoholic liquors or intoxicating
67 beer. All bonds required to be given under this section,
68 before being accepted by the state treasurer, shall be
69 approved by the attorney general and all such bonds shall
70 be given with surety approved by the attorney general. The
71 cost of such bond shall be borne by the commissioner as part
72 of his operating expense.

73 (e) In addition to the service of the deputy
74 commissioners hereinabove provided for, the commissioner
75 shall appoint an adequate number of competent persons to
76 serve as agents of the commissioner for the purpose of

77 keeping all necessary accounts and records required under
78 the provisions of this article; investigating the books,
79 accounts, records and other papers of retailers, distributors
80 and brewers; investigating applicants for license and the
81 places of business of retailers, distributors and brewers;
82 procuring evidence with respect to violations of the
83 provisions of this article, and particularly for use at
84 hearings held by the commissioner and on proceedings
85 instituted in court for the purpose of revoking or
86 suspending licenses hereunder; and such agents shall
87 perform such other duties as the commissioner may direct.
88 Such agents shall have the right to enter any licensed
89 premises in the state in the performance of their duties at
90 any hour of the day or night when beer is being sold or
91 consumed on such licensed premises. Refusal by any
92 licensee or by any employee of a licensee to permit such
93 agents to enter the licensed premises shall be an additional
94 cause for revocation or suspension of the license of such
95 licensee by the commissioner. The compensation of such
96 deputy commissioners, employees and agents shall be fixed
97 by the commissioner.

98 (f) Services rendered the state by clerks, sheriffs,
99 commissioners in chancery and special commissioners,
100 designated by the court, and court reporters and
101 stenographers performing services for said commissioner
102 and fees of witnesses summoned on behalf of the state in
103 proceedings to revoke or suspend retailer's licenses, shall be
104 treated as part of the expenses of administration and
105 enforcement, and such officers and said other persons shall
106 be paid the same fees and charges as would be chargeable
107 for like services performed for an individual; and the
108 compensation of such clerks, sheriffs and other persons
109 shall be paid out of the amount allocated for the expense of
110 administration enforcement, after the amount of such fees
111 and other charges shall be certified by the court to the
112 auditor.

**§11-16-5. State license required; alcoholic content of beer
manufactured for sale without state.**

1 No person shall manufacture, sell, possess for sale,
2 transport or distribute nonintoxicating beer except in
3 accordance with the provisions of this article, and after first

4 obtaining a state license therefor, as provided in this article.
5 Nothing contained in this article shall prohibit any brewer
6 located within the state from manufacturing or
7 transporting for sale without the state beer of an alcoholic
8 strength greater than that of nonintoxicating beer.

**§11-16-6. License in one capacity only; no connection between
different licensees; when brewer may act as
distributor; credit and rebates proscribed.**

1 (a) No person shall be licensed in more than one
2 capacity under the terms of this article, and there shall be
3 no connection whatsoever between any retailer or
4 distributor or brewer, and no person shall be interested
5 directly or indirectly through the ownership of corporate
6 stock, membership in a partnership, or in any other way in
7 the business of a retailer, if such person is at the same time
8 interested in the business of a brewer or distributor. A
9 brewer whose place of brewing or manufacture is located
10 within the state of West Virginia may act as distributor of
11 his own product from such brewery, place of manufacture
12 or bottling, but must have a distributor's license for
13 distribution from a place other than the place of brewing or
14 manufacture. A resident brewer or distributor may sell to a
15 consumer for personal use and not for resale, draught beer
16 in quantities of one-eighth, one-fourth and one-half barrels
17 in the original containers.

18 (b) It shall be unlawful for any brewer, manufacturer or
19 distributor to assist any retailer or for any retailer to accept
20 assistance from any brewer, manufacturer or distributor
21 any gifts or loans or forbearance of money or property of
22 any kind, nature or description, or other thing of value or by
23 the giving of any rebates or discounts of any kind
24 whatsoever except as may be permitted by rule, regulation,
25 or order promulgated by the commissioner in accordance
26 with this article.

§11-16-7. License not transferable; change of location.

1 No license issued under the provisions of this article shall
2 be transferred to another person, nor shall the location of
3 the premises to which the license relates be changed
4 without the written consent of the commissioner, which
5 consent may be given or refused, in his or her discretion.

§11-16-8. Form of application for license; fee and bond; refusal of license.

1 (a) A license may be issued by the commissioner to any
2 person who submits an application therefor, accompanied
3 by a license fee, and, where required, a bond, stating under
4 oath:

5 (1) The name and residence of the applicant, the
6 duration of such residency, that the applicant has been a
7 resident of the state for a period of two years next preceding
8 the date of the application and that the applicant is twenty-
9 one years of age. If the applicant is a firm, association,
10 partnership, limited partnership or corporation, the
11 application shall include the residence of the members or
12 officers for a period of two years next preceding the date of
13 such application: *Provided*, That if any person, firm,
14 partnership, limited partnership, association or
15 corporation applies for a license as a distributor, such
16 person, or in the case of a firm, partnership, limited
17 partnership or association, the members or officers thereof
18 shall state under oath that each has been a bona fide
19 resident of the state for four years preceding the date of
20 such application;

21 (2) The place of birth of applicant, that he or she is a
22 citizen of the United States and of good moral character
23 and, if a naturalized citizen, when and where naturalized;
24 and, if a corporation organized or authorized to do business
25 under the laws of the state, when and where incorporated,
26 with the name and address of each officer; that each officer
27 is a citizen of the United States and a person of good moral
28 character; and if a firm, association, partnership or limited
29 partnership, the place of birth of each member of the firm,
30 association, partnership or limited partnership, and that
31 each member is a citizen of the United States and if a
32 naturalized citizen, when and where naturalized, each of
33 whom must qualify and sign the application: *Provided*,
34 That the requirements as to residence shall not apply to the
35 officers of a corporation which shall apply for a retailer's
36 license, but the officers, agent or employee who shall
37 manage and be in charge of the licensed premises shall
38 possess all of the qualifications required of an individual
39 applicant for a retailer's license, including the requirement
40 as to residence;

41 (3) The particular place for which the license is desired
42 and a detailed description thereof;

43 (4) The name of the owner of the building and, if the
44 owner is not the applicant, that such applicant is the actual
45 and bona fide lessee of the premises;

46 (5) That the place or building in which is proposed to do
47 business conforms to all laws of health, fire and zoning
48 regulations applicable thereto, and is a safe and proper
49 place or building, and is not within three hundred feet of
50 any school or church, measured from front door to front
51 door, along the street or streets: *Provided*, That this
52 requirement shall not apply to a Class B license, or to any
53 place now occupied by a beer licensee, so long as it is
54 continuously so occupied: *Provided, however*, That the
55 prohibition against locating any such proposed business in
56 a place or building within three hundred feet of any school
57 shall not apply to any college or university that has notified
58 the commissioner, in writing, that it has no objection to the
59 location of any such proposed business in a place or
60 building within three hundred feet of such college or
61 university;

62 (6) That the applicant has never been convicted of any
63 felony, nor of any violation of the liquor laws, either federal
64 or state;

65 (7) That the applicant is the only person in any manner
66 pecuniarily interested in the business so asked to be
67 licensed, and that no other person shall be in any manner
68 pecuniarily interested therein during the continuance of the
69 license; and

70 (8) That the applicant has not during five years next
71 immediately preceding the date of said application had a
72 nonintoxicating beer license revoked;

73 (b) The provisions and requirements of subsection
74 (a) of this section are mandatory prerequisites for the
75 issuance, and in the event any applicant fails to qualify
76 under the same, license shall be refused. In addition to the
77 information furnished in any application, the commissioner
78 may make such addition and independent investigation of
79 each applicant, and of the place to be occupied, as deemed
80 necessary or advisable; and for this reason each and all
81 applications, with license fee and bond, must be filed thirty
82 days prior to the beginning of any fiscal year, and if

83 application is for an unexpired portion of any fiscal year,
84 issuance of license may be withheld for such reasonable
85 time as necessary for investigation.

86 (c) The commissioner may refuse a license to any
87 applicant under the provisions of this article if the
88 commissioner shall be of the opinion:

89 (1) That the applicant is not a suitable person to be
90 licensed;

91 (2) That the place to be occupied by the applicant is not
92 a suitable place; or is within three hundred feet of any
93 school or church, measured from front door to front door
94 along the street or streets: *Provided*, That this requirement
95 shall not apply to Class B licensee, or to any place now
96 occupied by a beer licensee, so long as it is continuously so
97 occupied: *Provided, however*, That the prohibition against
98 locating any such place to be occupied by an applicant
99 within three hundred feet of any school shall not apply to
100 any college or university that has notified the
101 commissioner, in writing, that it has no objection to the
102 location of any such place within three hundred feet of such
103 college or university; or

104 (3) That the license should not be issued for reason of
105 conduct declared to be unlawful by this article.

**§11-16-9. Amount of license tax; Class A and Class B retail
dealers; purchase and sale of nonintoxicating
beer permitted.**

1 (a) There is hereby levied and imposed an annual license
2 tax upon all dealers in and of nonintoxicating beer as
3 defined by this article, which license period shall begin on
4 the first day of July of each year and end on the thirtieth day
5 of June of the following year, and, if granted for a less
6 period, the same shall be computed semiannually in
7 proportion to the remainder of the fiscal year as follows:

8 (1) Retail dealers shall be divided into two classes, Class
9 A and Class B. In the case of a Class A retail dealer the
10 license fee shall be one hundred fifty dollars for each place
11 of business; the license fee for social, fraternal or private
12 clubs not operating for profit, and having been in
13 continuous operation for two years or more immediately
14 preceding the date of application, shall be one hundred fifty
15 dollars: *Provided*, That railroads operating in this state

16 may dispense nonintoxicating beer upon payment of an
17 annual license tax of ten dollars for each dining, club or
18 buffet car in which the same is dispensed.

19 Class A licenses issued for railroad dining, club or buffet
20 cars, as herein provided, shall authorize the licensee to sell
21 nonintoxicating beer at retail for consumption only on the
22 licensed premises where sold. All other Class A licenses
23 shall authorize the licensee to sell nonintoxicating beer at
24 retail for consumption on or off the licensed premises.

25 In the case of a Class B retailer, the fee for a Class B
26 license authorizing the sale of both chilled and unchilled
27 beer shall be one hundred fifty dollars for each place of
28 business. A Class B license shall authorize the licensee to
29 sell nonintoxicating beer at retail in bottles, cans or other
30 sealed containers only, and only for consumption off the
31 licensed premises. Sales under this license to any person at
32 any one time must be in less quantities than five gallons:
33 *Provided*, That a Class B retailer may sell to a consumer, for
34 personal use and not for resale, draught beer in quantities of
35 one-eighth, one-fourth and one-half barrels in the original
36 containers. Such license may be issued only to the
37 proprietor or owner of a grocery store. For the purpose of
38 this article, the term "grocery store" means and includes
39 any retail establishment commonly known as a grocery
40 store or delicatessen, where food or food products are sold
41 for consumption off the premises, and shall include and
42 mean a separate and segregated portion of any other retail
43 store which is dedicated solely to the sale of food, food
44 products and supplies for the table for consumption off the
45 premises. The commissioner may promulgate rules and
46 regulations necessary to carry this provision into effect.

47 (2) In the case of distributors, the license fee shall be one
48 thousand dollars for each place of business.

49 (3) In the case of a brewer with its principal place of
50 business located in this state, the license fee shall be one
51 thousand five hundred dollars for each place of
52 manufacture.

**§11-16-10. Brewer's license for foreign corporation;
application; bond; contents of application;
limitations; annual license fee; renewal;
suspension; license fee for sales representa-
tives.**

1 (a) A brewer's license shall be issued by the
2 commissioner to a foreign corporation which submits an
3 application therefor accompanied by the license fee
4 hereinafter prescribed, the bond required by section nine of
5 this article, a certified copy of the certificate of authority
6 issued by the secretary of state authorizing such foreign
7 corporation to transact business in the state and a certified
8 copy of its most recent corporation charter. Such
9 application shall be verified and shall state:

10 (1) The name of the corporation and the state under the
11 laws of which it is incorporated;

12 (2) The date of incorporation;

13 (3) The address of the principal office of the
14 corporation;

15 (4) The names and respective addresses of the directors
16 and officers of the corporation;

17 (5) The date that such foreign corporation qualified to
18 transact business in this state; and

19 (6) Such other information as the commissioner, by rule
20 or regulation, may require.

21 (b) So long as the foreign corporation remains qualified
22 to transact business in this state so that the secretary of
23 state can accept service of notice and process for such
24 foreign corporation, then, notwithstanding any other
25 provision of this article to the contrary, none of the officers
26 and directors of such foreign corporation need be residents
27 of this state.

28 (c) The license fee for a brewer's license for a foreign
29 corporation selling any nonintoxicating beer product
30 within this state, whether or not its principal place of
31 business be located in this state, shall be one thousand five
32 hundred dollars per annum. The license period shall begin
33 on the first day of July of each year and end on the thirtieth
34 day of June of the following year and, if granted for a lesser
35 period, the same shall be prorated semiannually in
36 proportion to the remainder of the fiscal year.

37 (d) All sales representatives for any brewer or
38 manufacturer of nonintoxicating beer shall be issued a
39 permit by the commissioner. The permit fee for each sales
40 representative of or employed by a licensed brewer or
41 manufacturer shall be fifty dollars.

42 (e) The licenses and permits issued under the provisions

43 of this section shall be renewed annually upon application
44 for renewal on a form prescribed by the commissioner and
45 payment of the annual license fee.

46 (f) If at any time such foreign corporation is no longer
47 qualified to transact business in this state, the secretary of
48 state shall notify the commissioner of such fact and the
49 commissioner shall thereupon suspend the brewer's license
50 issued to such foreign corporation until such time as such
51 foreign corporation has again qualified to transact business
52 in this state and has otherwise complied with the provisions
53 of this section.

54 (g) Notwithstanding any other provision of this article
55 to the contrary, any corporation issued a brewer's license
56 under the provisions of this article shall not engage in the
57 business of a distributor or retailer as defined in this article.

**§11-16-11. Special license for festivals and fairs; license fee
and application; license subject to provisions of
article; exceptions.**

1 The commissioner may issue a special license, to be
2 designated a Class S license, for the retail sale of
3 nonintoxicating beer at a festival or fair, provided the
4 festival or fair is sponsored or endorsed by the governing
5 body of either the municipality or of the county wherein the
6 festival or fair is to be conducted. Such special license shall
7 be issued for a term of no longer than ten consecutive days
8 and the fee therefor shall be two hundred fifty dollars
9 regardless of the term of the license. The application for
10 such license shall contain such information as the
11 commissioner may require and shall be submitted to the
12 commissioner at least thirty days prior to the first day upon
13 which nonintoxicating beer is to be sold at such festival or
14 fair.

15 A license issued under the provisions of this section and
16 the licensee holding such license shall be subject to all other
17 provisions of this article and the rules, regulations and
18 orders of the commissioner relating to such special license:
19 *Provided*, That the commissioner may, by rule, regulation
20 or order, provide for certain waivers or exceptions with
21 respect to such provisions, rules, regulations or order, as the
22 circumstances of each such festival or fair may require,
23 including, without limitation, the right to revoke or

24 suspend any license issued pursuant to this section prior to
25 any notice or hearing, notwithstanding the provisions of
26 section twenty-four of this article: *Provided, however,* That
27 under no circumstances shall the provisions of subdivision
28 (1), (2) or (3), subsection (a), section eighteen of this article,
29 be waived nor shall any exception be granted with respect
30 thereto.

§11-16-12. Bond of brewer, distributor and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.

1 (a) In addition to furnishing the information required
2 by this article, each brewer or distributor applying for a
3 license under this article shall furnish, as prerequisite to a
4 license, a bond with some solvent surety company as surety,
5 to be approved by the commissioner, payable to the state of
6 West Virginia, conditioned for the payment of any and all
7 additional taxes accruing during the period of such license,
8 and conditioned further for the faithful observance of the
9 provisions of this article, the rules, regulations and orders
10 promulgated pursuant thereto and of any other laws of the
11 state of West Virginia generally relating to the sale,
12 transportation, storage and distribution of nonintoxicating
13 beer, which said bonds shall be forfeited to the state upon
14 the revocation of the license of any such brewer or
15 distributor. The amount of such bond, in the case of a
16 resident brewer, shall be not less than five thousand dollars,
17 nor more than ten thousand dollars, and in the case of a
18 distributor, not less than two thousand dollars, nor more
19 than five thousand dollars for each place of business
20 licensed and conducted within the state, the amount of such
21 bond, between the minimum and maximum amounts, to be
22 determined in the discretion of the commissioner. In the
23 case of brewers shipping nonintoxicating beer into the
24 state, any brewer must also furnish a bond in a penalty of
25 not less than five thousand dollars nor more than twenty-
26 five thousand dollars conditioned as hereinabove in this
27 subsection provided and any bond furnished pursuant
28 hereto shall be forfeited to the state in the full amount of
29 said bond upon revocation of license of any such brewer or
30 distributor. Such money received by the state shall be

31 credited to the state fund, general revenue.

32 (b) Each Class A retail dealer, in addition to furnishing
33 the information required by this article, shall furnish as
34 prerequisite to obtaining a license, a bond with some
35 solvent surety company as surety, to be approved by the
36 commissioner, payable to the state of West Virginia, in the
37 amount not less than five hundred dollars, nor more than
38 one thousand dollars, within the discretion of the
39 commissioner. All such bonds shall be conditioned for the
40 faithful observance of the provisions of this article, the
41 rules, regulations and orders promulgated pursuant thereto
42 and of any other laws of the state of West Virginia generally
43 relating to the distribution, sale and dispensing of
44 nonintoxicating beer, and shall be forfeited to the state in
45 the full amount of said bond upon the revocation of the
46 license of any such retail dealer. Such money received by
47 the state shall be credited to the state fund, general revenue.

48 (c) Upon the revocation of the license of any Class A
49 retail dealer by the commissioner or by any court of
50 competent jurisdiction, the commissioner or the clerk of
51 said court shall notify the prosecuting attorney of the
52 county wherein such retail dealer's place of business is
53 located, or the prosecuting attorney of the county wherein
54 the licensee resides, of such revocation, and, upon receipt of
55 said notice, it shall be the duty of such prosecuting attorney
56 forthwith to institute appropriate proceedings for the
57 collection of the full amount of said bond. Upon request of
58 such prosecuting attorney, the commissioner shall deliver
59 the bond to him. Willful refusal without just cause therefor
60 by the prosecuting attorney to perform said duty hereby
61 imposed shall subject him to removal from office by the
62 circuit court of the county for which said prosecuting
63 attorney was elected upon proper proceedings and proof in
64 the manner provided by law.

§11-16-13. Barrel tax on nonintoxicating beer.

1 (a) There is hereby levied and imposed, in addition to
2 the license taxes provided for in this article, a tax of five
3 dollars and fifty cents on each barrel of thirty-one gallons
4 and in like ratio on each part barrel of nonintoxicating beer^f
5 manufactured in this state for sale within this state,
6 whether contained or sold in barrels, bottles or other

7 containers, and a like tax is hereby levied and imposed upon
8 all nonintoxicating beer manufactured outside of this state
9 and brought into this state for sale within this state; but no
10 nonintoxicating beer manufactured, sold or distributed in
11 this state is subject to more than one barrel tax. The brewer
12 manufacturing or producing nonintoxicating beer within
13 this state for sale within this state shall pay the barrel tax on
14 such nonintoxicating beer, and, except as provided
15 otherwise, the distributor who is the original consignee of
16 nonintoxicating beer manufactured or produced outside of
17 this state, or who brings such nonintoxicating beer into this
18 state, shall pay the barrel tax on such nonintoxicating beer
19 manufactured or produced outside of this state.

20 (b) On or before the tenth day of each month during the
21 license period, every brewer who manufactures or produces
22 nonintoxicating beer within this state shall file a report in
23 writing, under oath, to the commissioner, in the form
24 prescribed by the commissioner, stating its total estimated
25 sales of nonintoxicating beer to distributors within this
26 state during that month, and at the same time shall pay the
27 tax levied by this article on such estimated monthly sales.
28 On or before the tenth day of each month during the license
29 period, every distributor who is the original consignee of
30 nonintoxicating beer manufactured or produced outside
31 this state or who brings such beer into this state for sale
32 shall file a report in writing, under oath, to the
33 commissioner, in the form prescribed by the commissioner,
34 stating its total estimated purchases of such
35 nonintoxicating beer during that month, and at the same
36 time shall pay the tax thereon levied by this article for such
37 estimated monthly purchase: *Provided*, That the
38 commissioner may allow, or require, a brewer who
39 manufactures or produces nonintoxicating beer outside
40 this state to file the required report and pay the required tax
41 on behalf of its distributor or distributors. Any brewer or
42 distributor who files a report under this subsection may
43 adjust its monthly estimated sales or purchases report or
44 reports by filing amended reports by the twenty-fifth day of
45 the reporting month.

46 (c) Every brewer or distributor who files a report under
47 subsection (b) of this section shall file a final monthly report
48 of said sales or purchases, in a form and at a time prescribed

49 by the commissioner, stating actual nonintoxicating beer
50 sales and purchases and other information which
51 commissioner may require, and shall include a remittance
52 for any barrel tax owed for actual sales or purchases made
53 in excess of the amount estimated for that month.

54 (d) Any brewer or distributor who files a report
55 pursuant to subsection (b) of this section reflecting an
56 underestimation of twenty-five percent or more of actual
57 sales or purchases of nonintoxicating beer as shown by the
58 report filed pursuant to subsection (c) of this section shall
59 be assessed a penalty of one percent of the total taxes due in
60 such prior month.

61 (e) Brewers and distributors shall keep all records
62 which relate to the sale or purchase in this state of
63 nonintoxicating beer for a period of three years unless
64 written approval for earlier disposal is granted by the
65 commissioner.

§11-16-14. Collection of unpaid license tax.

1 If any person whose report to the commissioner as
2 provided for in section thirteen of this article shows him to
3 be liable for any unpaid taxes, and who shall fail to pay the
4 same as provided herein, the commissioner shall be
5 authorized to distrain immediately therefor, or collect the
6 amount thereof in any appropriate legal proceeding
7 instituted in the circuit court of Kanawha County, West
8 Virginia, or in the circuit court of the county wherein the
9 principal place of business of such person is located, as the
10 commissioner may deem appropriate, and in addition the
11 state shall have a lien on all the property of such person for
12 the full amount of the unpaid tax as ascertained by the
13 commissioner; and in addition the commissioner may
14 revoke the license of any such person failing to pay any such
15 tax.

**§11-16-15. Records of brewer, manufacturer or distributor;
collection of unpaid tax and penalty.**

1 Every brewer, manufacturer or distributor shall
2 maintain, keep and preserve for a period of three years such
3 record or records of nonintoxicating beer manufactured,
4 sold or distributed in this state, including, but not limited
5 to, coolers, together with such invoices, records, receipts,

6 bills of lading and other pertinent papers as may be
7 required by the commissioner, and the commissioner shall
8 have authority to inspect, by himself or through his duly
9 designated agent, the books, accounts, records and
10 memoranda of any person licensed under the provisions of
11 this article, and to examine, under oath, any officer, agent
12 or employee of any brewer, manufacturer or distributor.
13 The commissioner may require the production, within this
14 state at such time and place as he may designate, of any
15 books, accounts, papers or records kept within or without
16 the state, or verified copies in lieu thereof, in order that an
17 examination thereof may be made by the commissioner or
18 his duly designated agents. If, as the result of such
19 examination, it shall be found that any nonintoxicating
20 beer, subject to the payment of a tax, has been
21 manufactured, brewed, sold or distributed by any person,
22 upon which the tax has not been paid, the commissioner
23 shall make an assessment of the amount of tax so found to
24 be due, and, in addition thereto and as a part thereof, shall
25 assess a penalty of fifty percent of the amount of such tax
26 and shall notify such person of the total amount due. If the
27 same remains unpaid for a period of thirty days, the
28 commissioner shall have the authority to revoke any license
29 held at the time by the licensee and, in addition thereon, to
30 collect the amount found to be due by an appropriate legal
31 proceeding in any of the circuit courts in which an action for
32 the collection of unpaid taxes may be maintained under
33 section fourteen of this article, unless an appeal is taken
34 from the action of the commissioner as hereinafter
35 provided.

36 Within ten days after receipt of notice of any additional
37 amount claimed to be due from any person as shown by an
38 examination by the commissioner, such person, if he or she
39 deems themselves aggrieved thereby, shall so notify the
40 commissioner and shall request a hearing thereon and the
41 commissioner shall set a hearing into the matters raised by
42 such notice, which hearing shall be held as a contested case
43 pursuant to article five, chapter twenty-nine-a of this code,
44 except that the licensee shall have the right of appeal from
45 the commissioner's findings only to the circuit court of
46 Kanawha County, West Virginia. Whether the finding of the
47 commissioner is affirmed or reversed, such circuit court

48 shall enter an order accordingly and either party shall then
49 have the right of appeal to the supreme court of appeals of
50 the state.

**§11-16-16. Restrictions on nonresident brewers,
manufacturers and distributors.**

1 No brewer or manufacturer whose chief place of business
2 is outside the state of West Virginia shall offer for sale or sell
3 nonintoxicating beer, in the state of West Virginia, or offer
4 any of the same for shipment into this state, except to a
5 distributor who is duly licensed under this article, and no
6 such brewer or manufacturer shall consign, ship or deliver
7 any of the same to any person within the state of West
8 Virginia, or sell and deliver the same outside the state of
9 West Virginia to be transported into the state of West
10 Virginia, except to a duly licensed distributor for delivery at
11 the place of business of such distributor as set forth in such
12 brewer's or manufacturer's license. No such brewer or
13 manufacturer shall have any interest in the business of any
14 distributor or retailer, nor be connected directly or
15 indirectly with any distributor or retailer. Every such
16 brewer or manufacturer shall mail to the commissioner on
17 or before the tenth day of each calendar month, a sworn
18 statement showing all such sales and shipments of
19 nonintoxicating beer made by such brewer or manufacturer
20 during the preceding calendar month. If any such brewer or
21 manufacturer shall violate any of the provisions of this
22 article or shall violate any of the rules, regulations or order
23 of the commissioner, such brewer or manufacturer shall be
24 punished in like manner as provided for any nonresident
25 brewer who shall violate any provisions of this section. If
26 any such brewer shall violate any of the provisions of this
27 article, he shall not be permitted to sell, ship or deliver any
28 nonintoxicating beer to any distributor or to otherwise
29 engage in any business authorized by this article for a
30 period of not to exceed one year from the date the notice
31 shall be mailed to such brewer or manufacturer by the
32 commissioner of the fact that such brewer or manufacturer
33 has violated the provisions of this article or such rules,
34 regulations or orders of the commissioner. During such
35 period of one year, it shall be unlawful for any distributor or
36 manufacturer or for any other person within the

37 jurisdiction of the state of West Virginia, to buy or receive
38 from such brewer or manufacturer any nonintoxicating
39 beer or have any dealings with such brewer or
40 manufacturer with respect thereto. A distributor who has
41 not qualified with residence requirements of this article or
42 whose chief place of business is outside the state of West
43 Virginia shall not sell, ship, transport, convey or deliver or
44 cause to be sold, shipped, transported, conveyed or
45 delivered, directly or indirectly, any nonintoxicating beer
46 to any distributor within the state of West Virginia. If any
47 such distributor shall violate any of the provisions of this
48 article, he shall be punished in like manner as provided for
49 any nonresident brewer or manufacturer who shall violate
50 any provisions of this section.

§11-16-17. Container labeling.

1 It shall be unlawful for any brewer, manufacturer,
2 distributor or retailer to have affixed upon any beer, ale or
3 other malt beverage or malt cooler container, sold or for sale
4 in this state, a label bearing any design, picture or wording,
5 indicating that the contents of the container are brewed or
6 manufactured for one particular distributor or retailer or
7 group of retailers, or use any trademark other than that of a
8 licensed brewer or manufacturer.

§11-16-18. Unlawful acts of licensees; criminal penalties.

1 (a) It shall be unlawful:
2 (1) For any licensee, his, her, its or their servants, agents
3 or employees to sell, give or dispense, or any individual to
4 drink or consume, in or on any licensed premises or in any
5 rooms directly connected therewith, nonintoxicating beer
6 or cooler on weekdays between the hours of two o'clock a.m.
7 and seven o'clock a.m., or between the hours of two o'clock
8 a.m. and one o'clock p.m., on any Sunday, except in private
9 clubs licensed under the provisions of article seven, chapter
10 sixty of this code, where the hours shall conform with the
11 hours of sale of alcoholic liquors;
12 (2) For any licensee, his, her, its or their servants, agents
13 or employees, to sell, furnish or give any nonintoxicating
14 beer as defined in this article to any person visibly or
15 noticeably intoxicated, or to any person known to be insane
16 or known to be a habitual drunkard;

17 (3) For any licensee, his, her, its or their servants, agents
18 or employees, to sell, furnish or give any nonintoxicating
19 beer as defined in this article to any person who is less than
20 twenty-one years of age;

21 (4) For any distributor to sell or offer to sell, or any
22 retailer to purchase or receive, any nonintoxicating beer as
23 defined in this article, except for cash; and no right of action
24 shall exist to collect any claims for credit extended contrary
25 to the provisions of this subdivision. Nothing herein
26 contained shall prohibit a licensee from crediting to a
27 purchaser the actual price charged for packages or
28 containers returned by the original purchaser as a credit on
29 any sale, or from refunding to any purchaser the amount
30 paid or deposited for such containers when title is retained
31 by the vendor;

32 (5) For any brewer or distributor or his, her, its or their
33 agents, to transport or deliver nonintoxicating beer as
34 defined in this article to any retail licensee on Sunday;

35 (6) For any brewer or distributor to give, furnish, rent or
36 sell any equipment, fixtures, signs or supplies directly or
37 indirectly or through a subsidiary or affiliate to any licensee
38 engaged in selling products of the brewing industry at
39 retail, or to offer any prize, premium, gift or other similar
40 inducement, except advertising matter of nominal value, to
41 either trade or consumer buyers: *Provided*, That a
42 distributor may offer, for sale or rent, tanks of carbonic gas.
43 Nothing herein contained shall prohibit a brewer from
44 sponsoring any professional or amateur athletic event or
45 from providing prizes or awards for participants and
46 winners in any such events: *Provided, however*, That no
47 such event shall be sponsored which permits actual
48 participation by athletes or other persons who are minors,
49 unless specifically authorized by the commissioner;

50 (7) For any licensee to permit in his premises any lewd,
51 immoral or improper entertainment, conduct or practice;

52 (8) For any licensee except the holder of a license to
53 operate a private club issued under the provisions of article
54 seven, chapter sixty of this code, or a holder of a license for a
55 private wine restaurant issued under the provisions of
56 article eight of said chapter sixty, to possess a federal
57 license, tax receipt or other permit entitling, authorizing or
58 allowing such licensee to sell liquor or alcoholic drinks

59 other than nonintoxicating beer;

60 (9) For any licensee to obstruct the view of the interior
61 of his premises by enclosure, lattice, drapes or any means
62 which would prevent plain view of the patrons occupying
63 such premises. The interior of all licensed premises shall be
64 adequately lighted at all times: *Provided*, That provisions
65 of this subdivision shall not apply to the premises of a Class
66 B retailer, the premises of a private club licensed under the
67 provisions of article seven, chapter sixty of this code, or the
68 premises of a private wine restaurant licensed under the
69 provisions of article eight of said chapter sixty;

70 (10) For any licensee to manufacture, import, sell, trade,
71 barter, possess or acquiesce in the sale, possession or
72 consumption of any alcoholic liquors on the premises
73 covered by such license or on premises directly or indirectly
74 used in connection therewith: *Provided*, That the
75 prohibition contained in this subdivision with respect to the
76 selling or possessing or to the acquiescence in the sale,
77 possession or consumption of alcoholic liquors shall not be
78 applicable with respect to the holder of a license to operate
79 a private club issued under the provisions of article seven,
80 chapter sixty of this code, nor shall the prohibition be
81 applicable to a private wine restaurant licensed under the
82 provisions of article eight of said chapter insofar as such
83 private wine restaurant is authorized to serve wine;

84 (11) For any retail licensee to sell or dispense
85 nonintoxicating beer, as defined in this article, purchased
86 or acquired from any source other than a distributor,
87 brewer or manufacturer licensed under the laws of this
88 state;

89 (12) For any licensee to permit loud, boisterous or
90 disorderly conduct of any kind upon his or her premises or
91 to permit the use of loud musical instruments if either or
92 any of the same may disturb the peace and quietude of the
93 community wherein such business is located: *Provided*,
94 That no licensee shall have in connection with his or her
95 place of business any loudspeaker located on the outside of
96 the licensed premises that broadcasts or carries music of
97 any kind;

98 (13) For any person whose license has been revoked, as
99 in this article provided, to obtain employment with any
100 retailer within the period of one year from the date of such

101 revocation, or for any retailer to employ knowingly any
102 such person within such time;

103 (14) For any distributor to sell, possess for sale,
104 transport or distribute nonintoxicating beer except in the
105 original container;

106 (15) For any licensee to knowingly permit any act to be
107 done upon the licensed premises, the commission of which
108 constitutes a crime under the laws of this state;

109 (16) For any Class B retailer to permit the consumption
110 of nonintoxicating beer upon his licensed premises;

111 (17) For any Class A licensee, his, her, its or their
112 servants, agents or employees, or for any licensee by or
113 through such servants, agents or employees, to allow, suffer
114 or permit any person less than eighteen years of age to loiter
115 in or upon any licensed premises; except, however, that the
116 provisions of this subdivision shall not apply where such
117 person under the age of eighteen years is in or upon such
118 premises in the immediate company of his or her parent or
119 parents, or where and while such person under the age of
120 eighteen years is in or upon such premises for the purpose of
121 and actually making a lawful purchase of any items or
122 commodities therein sold, or for the purchase of and
123 actually receiving any lawful service therein rendered,
124 including the consumption of any item of food, drink or soft
125 drink therein lawfully prepared and served or sold for
126 consumption on such premises;

127 (18) For any distributor to sell, offer for sale, distribute
128 or deliver any nonintoxicating beer outside the territory
129 assigned to such distributor by the brewer or manufacturer
130 of such nonintoxicating beer or to sell, offer for sale,
131 distribute or deliver any such nonintoxicating beer to any
132 retailer whose principal place of business or licensed
133 premises is within the assigned territory of another
134 distributor of such nonintoxicating beer: *Provided*, That
135 nothing herein shall be deemed to prohibit sales of
136 convenience between distributors licensed in this state
137 wherein one such distributor sells, transfers or delivers to
138 another such distributor a particular brand or brands for
139 sale at wholesale; and

140 (19) For any licensee or any agent, servant or employee
141 of any such licensee to knowingly violate any rule or

142 regulation lawfully promulgated by the commissioner in
143 accordance with the provisions of chapter twenty-nine-a of
144 this code.

145 (b) Any person who violates any provision of this article
146 including, but not limited to, any provision of this section,
147 or any rule, regulation, or order lawfully promulgated by
148 the commissioner, or who makes any false statement
149 concerning any material fact in submitting application for
150 license or for a renewal of a license or in any hearing
151 concerning the revocation thereof, or who commits any of
152 the acts herein declared to be unlawful, shall be guilty of a
153 misdemeanor, and shall be punished for each offense by a
154 fine of not less than twenty-five nor more than five hundred
155 dollars, or imprisoned in the county jail for not less than
156 thirty days or more than six months, or by both fine and
157 imprisonment in the discretion of the court. Magistrates
158 shall have concurrent jurisdiction with the circuit court,
159 and any other courts having criminal jurisdiction in their
160 county, for the trial of all misdemeanors arising under this
161 article.

162 (c) Nothing in this article nor any rule or regulation of
163 the commissioner shall prevent or be deemed to prohibit
164 any licensee from employing any person who is at least
165 eighteen years of age to serve in such licensee's lawful
166 employ, including the sale or delivery of nonintoxicating
167 beer as defined in this article. With the prior approval of the
168 commissioner, a licensee whose principal business is the
169 sale of food or consumer goods or the providing of
170 recreational activities, including, but not limited to,
171 nationally franchised fast food outlets, family-oriented
172 restaurants, bowling alleys, drug stores, discount stores,
173 grocery stores, and convenience stores, may employ persons
174 who are less than eighteen years of age but at least sixteen
175 years of age: *Provided*, That such person's duties shall not
176 include the sale or delivery of nonintoxicating beer or
177 alcoholic liquors: *Provided, however*, That the
178 authorization to employ such persons under the age of
179 eighteen years shall be clearly indicated on the licensee's
180 license.

§11-16-19. Unlawful acts of persons; criminal penalties.

- 1 (a) Any person under the age of twenty-one years who,
- 2 for the purpose of purchasing nonintoxicating beer,

3 misrepresents his or her age, or who for such purpose
4 presents or offers any written evidence of age which is false,
5 fraudulent or not actually his or her own, or who illegally
6 attempts to purchase nonintoxicating beer, is guilty of a
7 misdemeanor, and, upon conviction thereof, shall be fined
8 in an amount not to exceed fifty dollars or shall be
9 imprisoned in the county jail for a period not to exceed
10 seventy-two hours, or both such fine and imprisonment, or,
11 in lieu of such fine and imprisonment, may, for the first
12 offense, be placed on probation for a period not exceeding
13 one year.

14 (b) Any person who shall knowingly buy for, give to or
15 furnish nonintoxicating beer to anyone under the age of
16 twenty-one to whom they are not related by blood or
17 marriage is guilty of a misdemeanor and shall, upon
18 conviction thereof, be fined in an amount not to exceed one
19 hundred dollars or shall be imprisoned in the county jail for
20 a period not to exceed ten days, or both such fine and
21 imprisonment.

22 (c) Any person who at any one time transports into the
23 state for their personal use and not for resale, more than six
24 and seventy-five hundredths gallons of nonintoxicating
25 beer, upon which the West Virginia barrel tax has not been
26 imposed, shall be guilty of a misdemeanor and shall, upon
27 conviction thereof, be fined in an amount not to exceed one
28 hundred dollars, and have all the untaxed nonintoxicating
29 beer in their possession at the time of the arrest confiscated,
30 or imprisoned for ten days in the county jail, or both fined
31 and imprisoned.

32 If the Congress of the United States repeals the mandate
33 established by the Surface Transportation Assistance Act of
34 1982 relating to National Uniform Drinking Age of twenty-
35 one as found in section six of Public Law 98-363, or a court
36 of competent jurisdiction declares the provision to be
37 unconstitutional or otherwise invalid, it is the intent of the
38 Legislature that the provisions contained in this section and
39 section eighteen of this article which prohibit the sale,
40 furnishing, giving, purchase or ownership of
41 nonintoxicating beer to or by a person who is less than
42 twenty-one years of age shall be null and void and the
43 provisions therein shall thereafter remain in effect and
44 apply to the sale, furnishing, giving, purchase or ownership

45 of nonintoxicating beer to or by a person who is less than
46 nineteen years of age.

**§11-16-20. Unlawful acts of brewers or manufacturers;
criminal penalties.**

1 (a) It shall be unlawful:

2 (1) For any brewer or manufacturer, or any other
3 person, firm or corporation engaging in the business of
4 selling nonintoxicating beer, ale or other malt beverage or
5 cooler to a distributor or wholesaler, to discriminate in
6 price, allowance, rebate, refund, commission, discount or
7 service between distributors or wholesalers licensed in
8 West Virginia. "Discriminate," as used in this section, shall
9 mean the granting of more favorable prices, allowances,
10 rebates, refunds, commissions, discounts or services to one
11 West Virginia distributor or wholesaler than to another.

12 (2) For any brewer or manufacturer, or any other
13 person, firm or corporation engaged in the business of
14 selling nonintoxicating beer, ale or other malt beverage or
15 malt cooler to a distributor or wholesaler, to sell or deliver
16 nonintoxicating beer, ale or other malt beverage or malt
17 cooler to any licensed distributor or wholesaler unless and
18 until such brewer, manufacturer, person, firm or
19 corporation, as the case may be, shall have filed the brewery
20 or dock price of such beer, ale or other malt beverage or malt
21 cooler, by brands and container sizes, with the
22 commissioner. No price schedule shall be put into effect
23 unless approved in writing by the commissioner. Any
24 approval or disapproval of the same shall be made in
25 writing within fourteen days after receipt by the
26 commissioner. Any disapproval shall be subject to review
27 under the provisions of article five, chapter twenty-nine-a
28 of this code.

29 (b) The violation of any provision of this section by any
30 brewer or manufacturer shall constitute grounds for the
31 forfeiture of the bond furnished by such brewer or
32 manufacturer in accordance with the provisions of section
33 twelve of this article.

**§11-16-21. Requirements as to franchise agreements between
brewers and distributors; transfer of franchise
by distributor; notice thereof to brewer;
arbitration of disputes as to such transfer;
violations and penalties; limitation of section.**

1 (a) On and after July one, one thousand nine hundred
2 seventy-one, it shall be unlawful for any brewer to transfer
3 or deliver to a distributor any nonintoxicating beer, ale or
4 other malt beverage or malt cooler without first having
5 entered into an equitable franchise agreement with such
6 distributor, which franchise agreement shall be in writing,
7 shall be identical as to terms and conditions with all other
8 franchise agreements between such brewer and its other
9 distributors in this state, and which shall contain a
10 provision in substance or effect as follows:

11 (1) The brewer recognizes that the distributor is free to
12 manage his business in the manner the distributor deems
13 best, and that this prerogative vests in the distributor,
14 subject to the provisions of this article, the exclusive right
15 to establish his or her selling prices, to select the brands of
16 beer he or she wishes to handle, and to determine the efforts
17 and resources which the distributor will exert to develop
18 and promote the sale of the brewer's products handled by
19 the distributor. However, since the brewer does not expect
20 that its products handled by the distributor will be sold by
21 others in the territory assigned to the distributor, the
22 brewer is dependent upon the distributor alone for the sale
23 of such products in said territory. Consequently, the brewer
24 expects that the distributor will price competitively the
25 products handled by the distributor, devote reasonable
26 effort and resources to the sale of such products and
27 maintain a satisfactory sales level.

28 (2) Whenever the manufacturing, bottling or other
29 production rights for the sale of nonintoxicating beer at
30 wholesale of any brewer is acquired by another brewer, the
31 franchised distributor of the selling brewer shall be entitled
32 to continue distributing the selling brewer's beer products
33 as authorized in the distributor's existing franchise
34 agreement, and the acquiring brewer shall market all the
35 selling brewer's beer products through said franchised
36 distributor as though the acquiring brewer had made the
37 franchise agreement, and the acquiring brewer may
38 terminate said franchise agreement only in accordance with
39 subdivision (2), subsection (b) of this section: *Provided*,
40 That the acquiring brewer may distribute any of its other
41 beer products through its duly authorized franchises in
42 accordance with all other provisions of this section.

43 (b) It shall also be unlawful:

44 (1) For any brewer or distributor, or any officer, agent
45 or representative of any brewer or distributor, to coerce or
46 persuade or attempt to coerce or persuade any person
47 licensed to sell, distribute or job nonintoxicating beer, ale
48 or other malt beverage or malt cooler at wholesale or retail,
49 to enter into any contracts or agreements, whether written
50 or oral, or to take any other action, which will violate or
51 tend to violate any provision of this article or any of the
52 rules, regulations, standards, requirements or orders of the
53 commissioner promulgated as provided in section twenty-
54 one of this article; or

55 (2) For any brewer or distributor, or any officer, agent
56 or representative of any brewer or distributor, to cancel,
57 terminate or rescind without due regard for the equities of
58 such brewer or distributor, and without just cause, any
59 franchise agreement, whether oral or written, and in the
60 case of an oral franchise agreement, whether the same was
61 entered into on or before the eleventh day of June, one
62 thousand nine hundred seventy-one, and in the case of a
63 franchise agreement in writing, whether the same was
64 entered into on, before or subsequent to July one, one
65 thousand nine hundred seventy-one. The cancellation,
66 termination or rescission of any such franchise agreement
67 shall not become effective for at least ninety days after
68 written notice of such cancellation, termination or
69 rescission has been served on the affected party and the
70 commissioner by certified mail, return receipt requested:
71 *Provided*, That said ninety-day period and said notice of
72 cancellation, termination or rescission shall not apply if
73 such cancellation, termination or rescission is agreed to in
74 writing by both the brewer and the distributor involved.

75 (c) In the event a distributor desires to sell or transfer
76 his or her franchise, such distributor shall give to the
77 brewer at least sixty days notice in writing of such
78 impending sale or transfer and the identity of the person,
79 firm or corporation to whom such sale or transfer is to be
80 made and such other information as the brewer may
81 reasonably request. Such notice shall be made upon forms
82 and contain such additional information as the
83 commissioner by rule or regulation shall prescribe. A copy
84 of such notice shall be forwarded to the commissioner. The
85 brewer shall be given sixty days to approve or disapprove of
86 such sale or transfer. If the brewer neither approves nor

87 disapproves thereof within sixty days of the date of receipt
88 of such notice, the sale or transfer of such franchise shall be
89 deemed to be approved by such brewer. In the event the
90 brewer shall disapprove of the sale or transfer to the
91 prospective franchisee, transferee or purchaser, such
92 brewer shall give notice to the distributor of that fact in
93 writing, setting forth the reason or reasons for such
94 disapproval. The approval shall not be unreasonably
95 withheld by the brewer. The fact that the prospective
96 franchisee, transferee or purchaser has not had prior
97 experience in the nonintoxicating beer business or beer
98 business shall not be deemed sufficient reason in and of
99 itself for a valid disapproval of the proposed sale or
100 transfer, but may be considered in conjunction with other
101 adverse factors in supporting the position of the brewer.
102 Nor may the brewer impose requirements upon the
103 prospective franchisee, transferee or purchaser which are
104 more stringent or restrictive than those currently
105 demanded of or imposed upon the brewer's other
106 distributors in the state of West Virginia. A copy of such
107 notice of disapproval shall likewise be forwarded to the
108 commissioner and to the prospective franchisee, transferee
109 or purchaser. In the event the issue be not resolved within
110 twenty days from the date of such disapproval, either the
111 brewer, distributor or prospective franchisee, transferee or
112 purchaser shall notify the other parties of his or her demand
113 for arbitration and shall likewise notify the commissioner
114 thereof. A dispute or disagreement shall thereupon be
115 submitted to arbitration in the county in which the
116 distributor's principal place of business is located by a
117 board of three arbitrators, which request for arbitration
118 shall name one arbitrator. The party receiving such notice
119 shall within ten days thereafter by notice to the party
120 demanding arbitration name the second arbitrator, or
121 failing to do so, the second arbitrator shall be appointed by
122 the chief judge of the circuit court of the county in which the
123 distributor's principal place of business is located on
124 request of the party requesting arbitration in the first
125 instance. The two arbitrators so appointed shall name the
126 third, or failing to do so within ten days after appointment
127 of the second arbitrator, the third arbitrator may be
128 appointed by said chief judge upon request of either party.

129 The arbitrators so appointed shall promptly hear and
130 determine the questions submitted pursuant to the
131 procedures established by the American Arbitration
132 Association and shall render their decision with all
133 reasonable speed and dispatch but in no event later than
134 twenty days after the conclusion of evidence. Said decision
135 shall include findings of fact and conclusions of law and
136 shall be based upon the justice and equity of the matter.
137 Each party shall be given notice of such decision. If the
138 decision of the arbitrators be in favor of or in approval of
139 the proposed sale or transfer, the brewer shall forthwith
140 agree to the same and shall immediately transfer the
141 franchise to the proposed franchisee, transferee or
142 purchaser, unless notice of intent to appeal such decision is
143 given the arbitrators and all other parties within ten days of
144 notification of such decision. If any such party deems
145 himself aggrieved thereby, such party shall have a right to
146 bring an appropriate action in circuit court. Any and all
147 notices given pursuant to this subsection shall be given to
148 all parties by certified or registered mail, return receipt
149 requested.

150 (d) The violation of any provision of this section by any
151 brewer shall constitute grounds for the forfeiture of the
152 bond furnished by such brewer in accordance with the
153 provisions of section twelve of this article. Moreover, any
154 circuit court of the county in which a distributor's principal
155 place of business is located shall have the jurisdiction and
156 power to enjoin the cancellation, termination or rescission
157 of any franchise agreement between a brewer and such
158 distributor, and, in granting an injunction to a distributor,
159 the court shall provide that the brewer so enjoined shall not
160 supply the customers or territory of the distributor while
161 the injunction is in effect.

§11-16-22. Powers of the commissioner; rules, regulations or orders.

1 (a) In addition to all other powers conferred upon the
2 commissioner and in order to effectively carry out the
3 provisions, intent and purposes of this article, the
4 commissioner shall have the power and authority to adopt,
5 promulgate, repeal, rescind and amend, in accordance with
6 the provisions of chapter twenty-nine-a of this code, rules,

7 regulations, standards, requirements and orders, including,
8 but not limited to, the following:

9 (1) Prescribing records and accounts pertaining to the
10 manufacture, distribution and sales of nonintoxicating
11 beer, to be kept by the licensee and the form thereof;

12 (2) Requiring the reporting of such information by
13 licensees as may be necessary for the effective
14 administration of this article;

15 (3) Regulating the branding and labeling of packages,
16 bottles or other containers in which nonintoxicating beer
17 may be sold; and, in his discretion, requiring the collection
18 of all taxes provided for under section thirteen of this
19 article, by the use of tax paid crowns, lids and/or stamps;

20 (4) Prohibiting shipment into the state and sale within
21 the state of low grade or under-standard nonintoxicating
22 beer;

23 (5) Referring to licenses and the issuance and revocation
24 of the same;

25 (6) Establishing the suitability of businesses and
26 locations for licensure, and requiring licensees to keep their
27 places of business where nonintoxicating beer is sold at
28 retail, and the equipment used in connection therewith,
29 clean and in a sanitary condition;

30 (7) The establishment of advertising guidelines,
31 prohibitions, and prior permissions generally, including,
32 but not limited to (i) the use of posters, placards, mirrors,
33 windows, doors, or indoor and outdoor signs generally, and
34 print and electronic advertising of retail licensees
35 specifically, (ii) the sponsoring of athletic events or contests
36 by licensees and restrictions relating thereto, (iii) the use of
37 equipment, fixtures or supplies in advertising, (iv) false
38 advertising with respect to any product of or sold by any
39 licensee, including, but not limited to, draught beer and
40 coolers, and (v) the extent, if any, to which free goods and
41 other inducements may be utilized by any licensee;

42 (8) Wholesale prices or wholesale price changes,
43 including, but not limited to, the regulation and extent,
44 if any, of any temporary price markoff or markdown,
45 temporary wholesale price change downward or price
46 discount, sometimes referred to as "post downs" or as
47 "posting down" or any other price change, the express

48 purpose of which is to be into effect a temporary price
49 reduction, as well as the duration of time during which
50 such temporary price reduction is to remain in effect.

51 (9) Restrictions upon West Virginia distributors or
52 other licensees with respect to the purchase of any
53 nonintoxicating beer or malt coolers from manufacturers or
54 brewers whether within or without the state who have
55 failed to qualify for manufacture or shipment of any such
56 product in the state; and

57 (10) Regulating, restricting or prohibiting a distributor
58 from selling, offering for sale, distributing or delivering
59 nonintoxicating beer to any retailer whose principal place
60 of business, residence or licensed premises is located
61 without or beyond the assigned territory of such distributor
62 of such nonintoxicating beer.

63 (b) Any rule, regulation, or order heretofore adopted by
64 the commissioner and currently in effect upon the
65 convening of the regular session of the Legislature held in
66 the year one thousand nine hundred eighty-six, shall remain
67 in effect until changed by the commissioner in the manner
68 prescribed by article three, chapter twenty-nine-a of this
69 code, irrespective of whether specific authority for such
70 currently effective rule or regulation existed prior to such
71 date.

§11-16-23. Revocation or suspension of license.

1 (a) The commissioner may revoke or suspend the license
2 of any licensee (i) for any of the reasons and upon any
3 grounds declared to be unlawful by section eighteen of this
4 article; or (ii) for any reason or ground upon which a license
5 might have been refused in the first instance had the facts at
6 the time of the issuance of renewal of such license been
7 known to the commissioner; or (iii) for the violation of any
8 rule, regulation or order promulgated by the commissioner
9 under authority of this article.

10 (b) In addition to the grounds for revocation or
11 suspension of a license above set forth, conviction of the
12 licensee of any offense constituting a violation of the laws of
13 this state or of the United States relating to non-
14 intoxicating beer or alcoholic liquor shall be mandatory
15 grounds for revocation or suspension of a license.

§11-16-24. Hearing on revocation or suspension of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee.

1 The commissioner shall not revoke nor suspend any
2 license issued pursuant to this article or impose any civil
3 penalties authorized thereby unless and until a hearing
4 shall be held after twenty days notice to the licensee of the
5 time and place of such hearing, which notice shall contain a
6 statement or specification of the charges, grounds or
7 reasons for such proposed contemplated action, and which
8 shall be served upon the licensee as notices under the West
9 Virginia rules of civil procedure or by certified mail, return
10 receipt requested, to the address for which the license was
11 issued; at which time and place, so designated in the notice,
12 the licensee shall have the right to appear and produce
13 evidence in his behalf, and to be represented by counsel.

14 The commissioner shall have authority to summon
15 witnesses in the hearings before him, and fees of witnesses
16 summoned on behalf of the state in proceedings to revoke or
17 suspend licenses shall be treated as a part of the expenses of
18 administration and enforcement. Such fees shall be the
19 same as those in similar hearings in the circuit courts of this
20 state.

21 If, at the request of the licensee or on his motion, the
22 hearing shall be continued and shall not take place on the
23 day fixed by the commissioner in the notice above provided
24 for, then such licensee's license shall be suspended until the
25 hearing and decision of the commissioner, and in the event
26 of revocation or suspension of such license, upon hearing
27 before the commissioner, the licensee shall not be permitted
28 to sell beer pending an appeal as provided by this article.
29 Any person continuing to sell beer after his license has been
30 suspended or revoked, as hereinbefore provided, shall be
31 guilty of a misdemeanor and shall be punished as provided
32 in section nineteen of this article.

33 The action of the commissioner in revoking or suspending
34 a license shall be subject to review by the circuit court of
35 Kanawha County, West Virginia, in the manner provided in
36 chapter twenty-nine-a of this code, when such licensee may
37 be aggrieved by such revocation or suspension. Petition for

38 such review must be filed with said circuit court within a
39 period of thirty days from and after the date of revocation or
40 suspension by the commissioner; and any licensee
41 obtaining an order for such review shall be required to pay
42 the costs and fees incident to transcribing, certifying and
43 transmitting the records pertaining to such matter to the
44 circuit court. An application to the supreme court of
45 appeals of West Virginia for a writ of error from any final
46 order of the circuit court in any such matter shall be made
47 within thirty days from and after the entry of such final
48 order.

49 All such hearings, upon notice to show cause why license
50 should be revoked or suspended, before the commissioner,
51 shall be held in the offices of the commissioner in
52 Charleston, Kanawha County, West Virginia, unless
53 otherwise provided in such notice, or agreed upon between
54 the licensee and the commissioner; and when such hearing
55 is held elsewhere than in the commissioner's office, the
56 licensee may be required to make deposits of the estimated
57 costs of such hearing.

58 Whenever any licensee has been convicted of any offense
59 constituting a violation of the laws of this state or of the
60 United States relating to nonintoxicating beer, or alcoholic
61 liquor, and such conviction has become final, the clerk of
62 the court in which such licensee has been convicted shall
63 forward to the commissioner a certified copy of the order or
64 judgment of conviction if such clerk has knowledge that the
65 person so convicted is a licensee, together with the
66 certification of such clerk that the conviction is final.

67 In the case of a Class B licensee with multiple licensed
68 locations, the commissioner may, in his or her discretion,
69 revoke or suspend only the license for the location or
70 locations involved in the unlawful conduct for which
71 licensure is revoked as opposed to all separately licensed
72 locations of such licensee.

§11-16-25. Reissuance of license after revocation.

1 No license shall be issued to any person who has formerly
2 held a license, under the provisions of this article, which has
3 been revoked by the commissioner, within a period of two
4 years from the date of such revocation; nor shall any license
5 be issued hereunder to any person who was an officer or

6 stockholder of a corporation whose license was revoked as
7 aforesaid, nor to any person who was a member of a
8 partnership or association whose license was revoked as
9 aforesaid, within said period of two years from the date of
10 revocation; nor shall any license be issued to any
11 corporation having a stockholder or director who has had a
12 license revoked as aforesaid, within said period of two years
13 from the date of the revocation of such person's license:
14 *Provided*, That the commissioner may, in his or her
15 discretion, reissue Class B licenses for any of such licensee's
16 locations not involved in the unlawful conduct of which
17 licensure was revoked notwithstanding such two year
18 period.

§11-16-26. Municipal license tax.

1 Any municipal corporation in this state shall have the
2 authority to levy a license tax under the provisions of
3 this article upon any retailer, distributor or brewer of
4 nonintoxicating beer whose place of business is situated
5 within such municipality, but the amount of the license tax
6 levied by such municipal corporation shall in no event
7 exceed the amount fixed herein to be levied by the state.
8 Only one municipal tax is to be so imposed and that only by
9 the municipality in which the place of business, or
10 warehouse, is located. Cities and incorporated towns are
11 hereby empowered to enact ordinances for the enforcement
12 of this article in conformity with the provisions of the same:
13 *Provided*, That in no case shall the rate of such municipal
14 license tax exceed the rate of such tax in effect on the first
15 day of January, one thousand nine hundred eighty-six.

**§11-16-27. Revenue collected and paid to state treasurer;
expense of administration.**

1 Taxes imposed and collected under the provisions of this
2 article shall be paid to the state treasurer in the manner
3 provided by law, and the taxes imposed by sections nine and
4 thirteen of this article shall be credited to the state fund,
5 general revenue. The expenses of administration and
6 enforcement shall be paid out of the taxes collected under
7 sections nine and thirteen of this article, but shall not
8 exceed fifteen percent of the amount so collected.

§11-16-28. Expiration date of existing licenses; when provisions operable.

1 (a) A license now in effect authorizing the manufacture,
2 distribution or sale of nonintoxicating beer shall remain in
3 effect until June thirtieth, one thousand nine hundred
4 eighty-six, unless sooner revoked in accordance with the
5 provisions of this article.

6 (b) The provisions of this article enacted during the
7 regular session of the Legislature held in the year one
8 thousand nine hundred eighty-six, shall become operable at
9 12:01 a.m. on the first day of July of said year: *Provided*,
10 That the commissioner may issue licenses prior to such date
11 and any licensee may do any act necessary in order to
12 prepare for and be able to engage in the retail sale of any
13 product regulated by this article on that date and at that
14 time.

§11-16-29. Severability.

1 The provisions of subdivision (cc), section ten, article two,
2 chapter two of this code shall apply to the provisions of this
3 article to the same extent as if the same were set forth in
4 extenso herein and to the extent therein provided the
5 provisions of this article are declared to be severable.

CHAPTER 38

(S. B. 134—By Senator Chafin)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article eight, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eliminating deduction from criminal sentence for donating blood.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. JAIL AND JAILER.

§7-8-11. Deduction from sentence for good conduct.

1 Every prisoner sentenced to the county jail for a term
2 exceeding six months who, in the judgment of the sheriff,
3 shall faithfully comply with all rules and regulations of
4 said county jail during his term of confinement shall be
5 entitled to a deduction of five days from each month of
6 his sentence.

CHAPTER 39

(S. B. 135—By Senator Chafin)

[Passed January 27, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting persons seventeen years of age or older to donate blood without the consent of a parent or guardian; and providing that no parent or guardian shall be liable for any medical expenses arising out of the donation of blood by a minor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. BLOOD DONATIONS.**§16-21-1. Donations by seventeen year old minors without parental permission.**

1 Notwithstanding any other provision of law to the
2 contrary, any person seventeen years of age or older may
3 donate blood without the permission or authorization of
4 a parent or guardian: *Provided*, That no parent or
5 guardian shall be liable for any medical expense which
6 may occur as a result of a minor donating blood under
7 the provisions of this section: *Provided, however*, That
8 nothing herein shall be construed as permitting such
9 minor of age seventeen or older to give blood for
10 compensation in any form.

CHAPTER 40

(H. B. 1230—By Delegate Kidd)

[Passed February 21, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend section five, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended relating to determination by the archives and history division as to the whereabouts of furnishings missing from the capitol; prohibiting the sale or disposal of such furnishings through means other than surplus state property sales; requiring the return of any such located furnishings; and providing for reimbursement to current owners.

Be it enacted by the Legislature of West Virginia:

That section five, article one, 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 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-5. Archives and history division; director.

1 (a) The purposes and duties of the archives and
2 history division are to locate, survey, investigate,
3 register, identify, excavate, preserve, protect, restore
4 and recommend to the commissioner for acquisition
5 historic, architectural, archaeological and cultural sites,
6 structures, documents and objects worthy of preserva-
7 tion, relating to the state of West Virginia and the
8 territory included therein from the earliest times to the
9 present, upon its own initiative or in cooperation with
10 any private or public society, organization or agency; to
11 conduct a continuing survey and study throughout the
12 state to determine the needs and priorities for the
13 preservation, restoration and development of such sites,
14 structures, documents and objects; to direct, protect,
15 excavate, preserve, study, and develop such sites,
16 structures, documents, and to operate and maintain a
17 state library for the preservation of all public records,
18 state papers, documents and reports of all three
19 branches of state government including all boards,

20 commissions, departments and agencies as well as any
21 other private or public papers, books or documents of
22 peculiar or historic interest or significance; to preserve
23 and protect all battle or regimental flags borne by West
24 Virginians and other memorabilia of historic interest; to
25 designate appropriate monuments, tablets or markers,
26 historic, architectural and scenic sites within the state
27 and to arrange for the purchase, replacement, care of
28 and maintenance of such monuments, tablets and
29 markers and to formulate and prepare suitable copy for
30 them; to operate and maintain a state museum; to
31 cooperate with the state geological and economic survey
32 in the survey's archaeological work; to edit and publish
33 a quarterly historical magazine devoted to the history,
34 biography, bibliography and genealogy of West Virgi-
35 nia; and to perform such other duties as may be assigned
36 to the division by the commissioner.

37 (b) With the advice and consent of the commission, in
38 addition to the duties above set forth, the division shall
39 determine the whereabouts of and require the return of
40 furnishings missing from the capitol building, includ-
41 ing, but not limited to, furnishings chosen or purchased
42 for the capitol by its architect, Cass Gilbert. No
43 furnishings from the capitol may be sold or disposed of
44 except under the direction of the director of surplus
45 state property pursuant to section three-a, article eight,
46 chapter five-a of this code. If furnishings originally
47 designated as capitol building furnishings have been
48 sold or otherwise disposed of without the requisite sale
49 procedures, such furnishings shall be returned to the
50 capitol and, upon presentation of proof of the amount
51 paid, the current owner shall be reimbursed for the cost
52 of the furnishing less any appropriate depreciation or
53 wear and tear.

54 (c) With the advice and consent of the archives and
55 history commission, the commissioner shall appoint a
56 director of the archives and history division, who shall
57 have: (1) A bachelor's degree in one of the social
58 sciences, or equivalent training and experience in the
59 fields of West Virginia history, history, historic preser-
60 vation, archaeology, or in records, library or archives

61 management; or (2) three years' experience in adminis-
62 tration in the fields of West Virginia history, history,
63 historic preservation, archaeology, or in records, library
64 or archives management. Notwithstanding these quali-
65 fications, the person serving as the state historian and
66 archivist on the date of enactment of this article shall
67 be eligible for appointment as the director of the
68 archives and history division. The director of the
69 archives and history division shall serve as the state
70 historian and archivist.

71 (d) With the approval of the commissioner, the
72 director shall establish professional positions within the
73 division. The director shall employ the personnel within
74 these professional positions for the division.

75 (e) The director may promulgate rules and regula-
76 tions concerning the professional policies and functions
77 of the archives and history division, subject to the
78 approval of the archives and history commission.

CHAPTER 41

(Com. Sub. for H. B. 1738—By Delegate Hamilton and Delegate Chambers)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, eight, nine, thirteen, fourteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section one-a, all relating to the solicitation of charitable funds act; definitions; commission on charitable organizations; powers and duties; compensation of members; expenses; registration of charitable organizations; fees; exemptions; limitation on activities of charitable organizations; registration of professional fund-raising counsel and professional solicitors; bonds; records and books; prohibited acts; nonresident charitable organizations, professional fund-raising counsel and solicitors; designa-

tion of secretary of state as agent for service of process; notice of such service by attorney general; enforcement and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

- §29-19-1a. General purpose.
- §29-19-2. Definitions.
- §29-19-3. Commission on charitable organizations; powers and duties.
- §29-19-4. Compensation of membrs; expenses of commission.
- §29-19-5. Registration of charitable organizations; fee.
- §29-19-6. Certain persons and organizations exempt from registration.
- §29-19-8. Limitations on activities of charitable organizations.
- §29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.
- §29-19-13. Prohibited acts.
- §29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors; designation of secretary of state as agent for service of process; notice of such service by attorney general.
- §29-19-15. Enforcement and penalties.

§29-19-1a. General purpose.

1 The purpose of this article is to protect the people of
 2 the state of West Virginia by requiring full public
 3 disclosure by persons and organizations who solicit
 4 funds from the public and the purposes for which such
 5 funds are solicited and how they are actually used, and
 6 to prevent deceptive and dishonest statements and
 7 conduct in the solicitation and reporting of funds for or
 8 in the name of charity.

§29-19-2. Definitions.

1 As used in this article:

2 (1) "Charitable organization" means a person who is
 3 or holds itself out to be a benevolent, educational,
 4 philanthropic, humane, patriotic, religious or eleemosy-

5 nary organization, or any person who solicits or obtains
6 contributions solicited from the public for charitable
7 purposes, or any person who in any manner employs any
8 appeal for contributions which may be reasonably
9 interpreted to suggest that such contributions will be
10 used for charitable purposes. A chapter, branch, area,
11 office or similar affiliate or any person soliciting
12 contributions within the state for a charitable organiza-
13 tion which has its principal place of business outside the
14 state is a charitable organization for the purpose of this
15 article.

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

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

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

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

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

45 (7) "Professional solicitor" means any person who, for
46 a financial or other consideration, solicits contributions
47 for, or on behalf of a charitable organization, whether
48 such solicitation is performed personally or through said
49 person's agents, servants or employees specially em-
50 ployed by, or for a charitable organization, who are
51 engaged in the solicitation of contributions under the
52 direction of such person, or a person who plans,
53 conducts, manages, carries on, advises or acts as a
54 consultant to a charitable organization in connection
55 with the solicitation of contributions but does not qualify
56 as "professional fund-raising counsel" within the
57 meaning of this article. A bona fide salaried officer or
58 employee of a charitable organization maintaining a
59 permanent establishment within the state is not a
60 professional solicitor.

61 No attorney, investment counselor or banker, who
62 advises any person to make a contribution to a charit-
63 able organization, shall be considered, as the result of
64 such advice, to be a professional fund-raising counsel or
65 a professional solicitor.

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

**§29-19-3. Commission on charitable organizations; pow-
ers and duties.**

1 (a) The commission on charitable organizations,
2 herein referred to as the "commission," consists of seven
3 members, including the secretary of state or his or her
4 designate, who shall be the chairman, the attorney
5 general or his or her designate, the commissioner of
6 human services or his or her designate, the director of
7 the state department of health or his or her designate,
8 and three members to be appointed by the governor who
9 shall serve at his will and pleasure.

10 (b) The commission shall serve as body advisory to the
11 secretary of state and, as such, shall have the following
12 powers and duties:

13 (1) To hold hearings and make adjudications as
14 provided in section nine and section fifteen of this

15 article;

16 (2) To advise and make recommendations to the
17 secretary of state on policies and practices to effect the
18 purposes of this article;

19 (3) To request that the attorney general, and, when
20 appropriate, the prosecuting attorney of any county,
21 take action to enforce this article or protect the public
22 from any fraudulent scheme or criminal act;

23 (4) To meet at the request of the secretary of state or
24 pursuant to regulations promulgated by him. Minutes of
25 each meeting shall be public records and filed with the
26 secretary of state.

27 (c) The secretary of state shall administer this article,
28 prescribe forms for registration or other purposes, and
29 promulgate rules and regulations in furtherance of this
30 article in accordance with the provisions of chapter
31 twenty-nine-a of this code.

**§29-19-4. Compensation of members; expenses of
commission.**

1 No member of the commission may receive any
2 compensation, whether in the form of salary, per diem
3 allowance or otherwise, for or in connection with his or
4 her services as a member. Each member, however, is
5 entitled to reimbursement by the commission for all
6 reasonable and necessary expenses actually incurred in
7 connection with the performance of his or her duties as
8 a member.

9 The expenses of the members and the general oper-
10 ating expenses of the commission shall be paid from
11 moneys appropriated by the Legislature for those
purposes.

§29-19-5. Registration of charitable organizations; fee.

1 (a) Every charitable organization except as provided
2 in section six of this article which intends to solicit
3 contributions within this state or to have funds solicited
4 on its behalf shall, prior to any solicitation, file a
5 registration statement with the secretary of state upon
6 forms prescribed by him or her, which shall be good for

7 one full year and which shall be refiled in the next and
8 each following year in which such charitable organiza-
9 tion is engaged in solicitation activities. It shall be the
10 duty of the president, chairman or principal officer of
11 such charitable organization to file the statements
12 required under this article. Such statements shall be
13 sworn to and shall contain the following information:

14 (1) The name of the organization and the purpose for
15 which it was organized;

16 (2) The principal address of the organization and the
17 address of any offices in this state. If the organization
18 does not maintain an office, the name and address of the
19 person having custody of its financial records;

20 (3) The names and addresses of any chapters,
21 branches or affiliates in this state;

22 (4) The place where and the date when the organiza-
23 tion was legally established, the form of its organization;

24 (5) The names and addresses of the officers, directors,
25 trustees and the principal salaried executive staff
26 officer;

27 (6) A copy of a balance sheet and income and expense
28 statement for the organization's immediately preceding
29 fiscal year, or a copy of a financial statement covering,
30 in a consolidated report, complete information as to all
31 the preceding year's fund-raising activities of the
32 charitable organization, showing kind and amount of
33 funds raised, costs and expenses incidental thereto, and
34 allocation or disbursement of funds raised including the
35 amounts raised in the state and the percentage of that
36 amount that remains in the state: *Provided*, That for
37 organizations raising more than fifty thousand dollars
38 per year in contributions, the balance sheet and income
39 and expense statement, or financial statement provided
40 shall be audited by an independent public accountant;

41 (7) A copy of any determination of the organization's
42 tax-exempt status under section 501 of the Internal,
43 Revenue Code and a copy of the last filed Internal
44 Revenue Service form 990 and Schedule A for every
45 charitable organization and any parent organization;

46 (8) Whether the organization intends to solicit contri-
47 butions from the public directly or have such done on
48 its behalf by others;

49 (9) Whether the organization is authorized by any
50 other governmental authority to solicit contributions
51 and whether it is or has ever been enjoined by any court
52 from soliciting contributions;

53 (10) The general purpose or purposes for which the
54 contributions to be solicited shall be used;

55 (11) The name or names under which it intends to
56 solicit contributions;

57 (12) The names of the individuals or officers of the
58 organization who will have final responsibility for the
59 custody of the contributions; and

60 (13) The names of the individuals or officers of the
61 organization responsible for the final distribution of the
62 contributions.

63 (b) Each chapter, branch or affiliate, except an
64 independent member agency of a federated fund-raising
65 organization, may separately report the information
66 required by this subsection, or report the information to
67 its parent organization which shall then furnish such
68 information as to its West Virginia affiliates, chapters
69 and branches in a consolidated form to the secretary of
70 state. An independent member agency of a federated
71 fund-raising organization, as hereinbefore defined, shall
72 comply with the provisions of this article independently.
73 Each organization shall file a separate registration form
74 for each name under which funds will be solicited.

75 (c) The registration forms and any other documents
76 prescribed by the secretary of state shall be signed by
77 an authorized officer or by an independent public
78 accountant and by the chief fiscal officer of the
79 charitable organization and shall be verified under oath.

80 (d) Every charitable organization collecting less than
81 one million dollars during any year which submits an
82 independent registration to the secretary of state shall
83 pay an annual registration fee of fifteen dollars; every

84 charitable organization collecting more than one million
85 dollars during one year which submits an independent
86 registration to the secretary of state shall pay an annual
87 registration fee of fifty dollars; a parent organization
88 filing on behalf of one or more chapters, branches or
89 affiliates or a single organization filing under different
90 names shall pay a single annual registration fee of fifty
91 dollars for itself and such chapters, branches or
92 affiliates included in the registration statement.

§29-19-6. Certain persons and organizations exempt from registration.

1 (a) The following charitable organizations shall not be
2 required to file an annual registration statement with
3 the secretary of state:

4 (1) Educational institutions, the curriculums of which
5 in whole or in part are registered or approved by the
6 state board of education, either directly or by acceptance
7 of accreditation by an accrediting body recognized by
8 the state board of education; and any auxiliary associ-
9 ations, foundations and support groups which are
10 directly responsible to any such educational institutions;

11 (2) Persons requesting contributions for the relief of
12 any individual specified by name at the time of the
13 solicitation when all of the contributions collected
14 without any deductions whatsoever are turned over to
15 the named beneficiary for his or her use;

16 (3) Hospitals which are nonprofit and charitable;

17 (4) Organizations which solicit only within the mem-
18 bership of the organization by the members thereof:
19 *Provided*, That the term "membership" shall not include
20 those persons who are granted a membership upon
21 making a contribution as the result of solicitation. For
22 the purpose of this section, "member" means a person
23 having membership in a nonprofit corporation, or other
24 organization, in accordance with the provisions of its
25 articles of incorporation, bylaws or other instruments
26 creating its form and organization; and, having bona
27 fide rights and privileges in the organization, such as
28 the right to vote, to elect officers, directors and issues,

29 to hold office or otherwise as ordinarily conferred on
30 members of such organizations.

31 (5) Religious organizations, churches or any group
32 affiliated with and forming an integral part of these
33 organizations of which no part of the net income inures
34 to the direct benefits of any individual and which have
35 received a declaration of current tax-exempt status from
36 the government of the United States.

37 (b) The following charitable organizations are exempt
38 from filing an annual registration statement with the
39 secretary of state if they do not employ a professional
40 solicitor or fund-raiser or do not intend to solicit and
41 receive and do not actually raise or receive contributions
42 from the public in excess of ten thousand dollars during
43 a calendar year:

44 (1) Local youth athletic organizations;

45 (2) Community civic clubs;

46 (3) Community service clubs;

47 (4) Fraternal organizations;

48 (5) Labor unions;

49 (6) Local posts, camps, chapters or similarly desig-
50 nated elements or county units of such elements of bona
51 fide veterans organizations or auxiliaries which issue
52 charters to such local elements throughout the state;

53 (7) Bona fide organizations of volunteer firemen or
54 auxiliaries;

55 (8) Bona fide ambulance associations or auxiliaries;

56 (9) Bona fide rescue squad associations or auxiliaries.

57 Charitable organizations which do not intend to solicit
58 and receive in excess of ten thousand dollars, but do
59 receive in excess of that amount from the public, shall
60 file the annual registration statement within thirty days
61 after contributions are in excess of ten thousand dollars.

**§29-19-8. Limitations on activities of charitable organiza-
tions .**

1 No charitable organizations subject to this article may
2 solicit funds from the public except for charitable
3 purposes or expend funds raised for charitable purposes
4 for noncharitable purposes.

5 All registered charitable organizations and their
6 professional fund-raisers and solicitors are required to
7 disclose in writing: (1) The name of a representative of
8 the charitable organization to whom inquiries can be
9 made, (2) the name of the charitable organization, (3) the
10 purpose of the solicitation, (4) upon request of the person
11 solicited, the estimated percentage of the money
12 collected which will be applied to the cost of solicitation
13 and administration or how much of the money collected
14 will be applied directly for the charitable purpose, and
15 (5) the number of the raffle, bingo or other such state
16 permit used for fund-raising.

17 The disclosure statement shall be conspicuously
18 displayed on any written or printed solicitation. Where
19 the solicitation consists of more than one piece, the
20 disclosure statement shall be displayed on a prominent
21 part of the solicitation materials.

22 Organizations applying for registration shall be
23 reviewed according to objective standards, including,
24 but not limited to, the following:

25 (a) Charitable organizations shall include in each
26 solicitation a clear description of programs for which
27 funds are requested and source from which written
28 information is available. Expenditures shall be related
29 in a primary degree to stated purpose (programs and
30 activities) described in solicitations and in accordance
31 with reasonable donor expectations.

32 (b) Charitable organizations shall establish and
33 exercise controls over fund-raising activities conducted
34 for the organizations' benefit, including written con-
35 tracts and agreements and assurance of fund-raising
36 activities without excessive pressure.

37 (c) Charitable organizations shall substantiate a valid
38 governing structure and members shall comply with the
39 provisions for conflict of interest as defined in section

40 twenty-five, article one, chapter thirty-one of this code.

41 (d) No charitable organization, professional fund-
42 raiser or other person soliciting contributions for or on
43 behalf of a charitable organization may use a name,
44 symbol or statement so closely related or similar to that
45 used by another charitable organization or government-
46 tal agency that the use thereof would tend to confuse or
47 mislead the public.

48 (e) Every printed solicitation shall include the follow-
49 ing statement: "A copy of the official registration and
50 supporting documents may be obtained from the West
51 Virginia Secretary of State, State Capitol, Charleston,
52 West Virginia 25305. Registration does not imply
53 endorsement."

**§29-19-9. Registration of professional fund-raising coun-
sel and professional solicitor; bonds; records;
books.**

1 (a) No person may act as a professional fund-raising
2 counsel or professional solicitor for a charitable organ-
3 ization subject to the provisions of this article, unless he
4 or she has first registered with the secretary of state.
5 Applications for such registration shall be in writing
6 under oath or affirmation in the form prescribed by the
7 secretary of state and contain such information as he or
8 she may require. The application for registration by
9 professional fund-raising counsel or professional solici-
10 tor shall be accompanied by an annual fee in the sum
11 of fifty dollars. A partnership or corporation, which is
12 a professional fund-raising counsel or professional
13 solicitor, may register for and pay a single fee on behalf
14 of all its members, officers, agents and employees.
15 However, the names and addresses of all officers, agents
16 and employees of professional fund-raising counsel and
17 all professional solicitors, their officers, agents, servants
18 or employees employed to work under the direction of
19 a professional solicitor shall be listed in the application.

20 (b) The applicant shall, at the time of the making of
21 an application, file with and have approved by the
22 secretary of state a bond in which the applicant shall
23 be the principal obligor in the sum of ten thousand

24 dollars and which shall have one or more sureties
25 satisfactory to the secretary of state, whose liability in
26 the aggregate as such sureties will at least equal the
27 said sum and maintain said bond in effect so long as a
28 registration is in effect. The bond shall run to the state
29 for the use of the secretary of state and any person who
30 may have a cause of action against the obligor of said
31 bonds for any losses resulting from malfeasance,
32 nonfeasance or misfeasance in the conduct of solicitation
33 activities. A partnership or corporation which is a
34 professional fund-raising counsel or professional solicitor
35 may file a consolidated bond on behalf of all its
36 members, officers and employees.

37 (c) Each registration shall be valid throughout the
38 state for a period of one year and may be renewed for
39 additional one-year periods upon written application
40 under oath in the form prescribed by the secretary of
41 state and the payment of the fee prescribed herein.

42 (d) The secretary of state or his or her designate shall
43 examine each application, and if he or she finds it to be
44 in conformity with the requirements of this article and
45 all relevant rules and regulations and the registrant has
46 complied with the requirements of this article and all
47 relevant rules and regulations, he or she shall approve
48 the registration. Any applicant who is denied approved
49 registration may, within fifteen days from the date of
50 notification of such denial, request, in writing, a hearing
51 before the commission, which hearing shall be held
52 within fifteen days from the date of the request.

§29-19-13. Prohibited acts.

1 (a) No charitable organization, professional fund-
2 raising counsel or professional solicitor subject to the
3 provisions of this article who is required to register with
4 the secretary of state pursuant to the provisions of this
5 article whose registration has been cancelled, suspended
6 or refused may solicit contributions from the public.

7 (b) No charitable organization, professional fund-
8 raising counsel or professional solicitor subject to the
9 provisions of this article may use or exploit the fact of
10 registration so as to lead the public to believe that such

11 registration in any manner constitutes an endorsement
12 or approval by the state. The use of the following
13 statement shall not be deemed a prohibited exploitation:
14 "A copy of the official registration and supporting
15 documents may be obtained from the West Virginia
16 Secretary of State, State Capitol, Charleston, West
17 Virginia 25305. Registration does not imply
18 endorsement."

19 (c) No person may, in connection with the solicitation
20 of contributions for or the sale of goods or services of
21 a person other than a charitable organization, misre-
22 present to or mislead anyone by any manner, means,
23 practice or device whatsoever, to believe that the person
24 on whose behalf such solicitation or sale is being
25 conducted is a charitable organization or that the
26 proceeds of such solicitation or sale will be used for
27 charitable purposes, if such is not the fact.

28 (d) No person may in connection with the solicitation
29 of contributions or the sale of goods or services for
30 charitable purposes represent to or lead anyone by any
31 manner, means, practice or device whatsoever, to
32 believe that any other person sponsors or endorses such
33 solicitation of contributions, sale of goods or services for
34 charitable purposes or approves of such charitable
35 purposes of a charitable organization connected there-
36 with when such other person has not given consent to
37 the use of his or her name for these purposes: *Provided,*
38 That any member of the board of directors or trustees
39 of a charitable organization or any other person who has
40 agreed either to serve or to participate in any voluntary
41 capacity in the campaign shall be deemed thereby to
42 have given his or her consent to the use of his or her
43 name in said campaign.

44 (e) No person may make any representation that he
45 or she is soliciting contributions for or on behalf of a
46 charitable organization or shall use or display any
47 emblem, device or printed matter belonging to or
48 associated with a charitable organization for the
49 purpose of soliciting or inducing contributions from the
50 public without first being authorized to do so by the
51 charitable organization.

52 (f) No professional solicitor may solicit in the name of
53 or on behalf of any charitable organization unless such
54 solicitor:

55 (1) Has obtained the written authorization of two
56 officers of such organization, a copy of which shall be
57 filed with the secretary of state. Such written author-
58 ization shall bear the signature of the solicitor and shall
59 expressly state on its face the period for which it is
60 valid, which shall not exceed one year from the date
61 issued; and

62 (2) Carries such authorization on his or her person
63 when making solicitations and exhibits the same on
64 request to persons solicited or police officers or agents
65 of the secretary of state.

**§29-19-14. Nonresident charitable organizations, profes-
sional fund-raising counsel and solicitors;
designation of secretary of state as agent
for service of process; notice of such service
by attorney general.**

1 Any charitable organization or professional fund-
2 raising counsel or professional solicitor having its or his
3 or her principal place of business without the state, or
4 organized under and by virtue of the laws of a foreign
5 state, which or who shall solicit contributions from
6 people in this state, is subject to the provisions of this
7 article and shall be deemed to have irrevocably ap-
8 pointed the secretary of state as its or his or her agent
9 upon whom may be served any summons, subpoena,
10 subpoena duces tecum or other process directed to such
11 charitable organization, professional fund-raising
12 counsel or professional solicitor or any partner, princi-
13 pal officer or director thereof in any action or proceed-
14 ing brought under the provisions of this article. Service
15 of such process upon the secretary of state shall be made
16 by personally delivering to and leaving with him a copy
17 thereof, and such service shall be sufficient service:
18 *Provided*, That notice of such service and a copy of such
19 process are forthwith sent by the attorney general to
20 such charitable organization or professional fund-
21 raising counsel or professional solicitor by registered or

22 certified mail with return receipt requested at its or his
23 or her office, as set forth in the registration form
24 required to be filed with the secretary of state pursuant
25 to this article or in default of the filing of such form,
26 at the last address known to the attorney general or to
27 the secretary of state.

§29-19-15. Enforcement and penalties.

1 (a) If any charitable organization, professional fund-
2 raising counsel or professional solicitor fails to file any
3 registration application or statement, report or other
4 information required to be filed by the secretary of state
5 under this article, or otherwise violates the provisions
6 of this act, the secretary of state shall notify the
7 delinquent charitable organization, professional fund-
8 raising counsel or professional solicitor by mailing a
9 notice by registered or certified mail, with return
10 receipt requested, to its or his or her last-known address.
11 If the required registration application or statement,
12 annual report or other information is not filed or if the
13 existing violation is not discontinued within two weeks
14 after the formal notification or receipt of such notice, the
15 secretary of state may cancel, suspend or refuse to
16 accept the registration of such delinquent charitable
17 organization, professional fund-raising counsel or
18 professional solicitor.

19 (b) The secretary of state, upon his or her own motion,
20 upon request of the commission, or upon complaint of
21 any person, may if he or she finds reasonable ground
22 to suspect a violation, investigate any charitable
23 organization, professional fund-raising counsel or
24 professional solicitor to determine whether such charit-
25 able organization, professional fund-raising counsel or
26 professional solicitor has violated the provisions of this
27 article or has filed any application or other information
28 required under this article which contains false or
29 misleading statements. If the commission finds that any
30 application or other information contains false or
31 misleading statements, or that a registrant under this
32 article has violated provisions thereof, it may recom-
33 mend to the secretary of state that the registration be
34 suspended or cancelled and the secretary of state may

35 so order.

36 (c) The registration of any charitable organization,
37 professional fund-raising counsel or professional solicitor,
38 which or who knowingly makes a false or misleading
39 statement in any registration application or state-
40 ment, report or other information required to be filed
41 by the secretary of state or this article, shall be revoked.

42 (d) All administrative proceedings under this article,
43 including the promulgation of rules and regulations,
44 shall be conducted in accordance with the provisions of
45 chapter twenty-nine-a of this code and all commission
46 adjudications shall be subject to review and appeal as
47 provided therein.

48 (e) In addition to the foregoing, any person who
49 willfully and knowingly violates any provision of this
50 article, or who shall willfully and knowingly give false
51 or incorrect information to the secretary of state in
52 filing statements or reports required by this article,
53 whether such report or statement is verified or not, shall
54 be guilty of a misdemeanor, and, upon conviction
55 thereof, shall be fined upon first conviction thereof in
56 an amount not less than one hundred dollars nor more
57 than five hundred dollars, or be imprisoned in the
58 county jail for not more than six months, or be both
59 fined and imprisoned, and for the second and any
60 subsequent offense to pay a fine of not less than five
61 hundred dollars nor more than one thousand dollars, or
62 be imprisoned for not more than one year, or be both
63 fined and imprisoned.

64 (f) Whenever the attorney general or any prosecuting
65 attorney has reason to believe that any charitable
66 organization, professional fund-raising counsel or
67 professional solicitor is operating in violation of the
68 provisions of this article, or has knowingly and willfully
69 made any false statement in any registration application
70 or statement, report or other information required to be
71 filed by this article, or whenever a charitable organiza-
72 tion, professional fund-raising counsel or professional
73 solicitor has failed to file a registration statement
74 required by this article, or whenever there is employed

75 or is about to be employed in any solicitation or
76 collection of contributions for a charitable organization
77 any device, scheme or artifice to defraud or to obtain
78 money or property by means of any false pretense,
79 representation or promise, or whenever the officers or
80 representatives of any charitable organization, profes-
81 sional fund-raising counsel or professional solicitor have
82 refused or failed after notice to produce any records of
83 such organization, or whenever the funds raised by
84 solicitation activities are not devoted or will not be
85 devoted to the charitable purposes of the charitable
86 organization, in addition to all other actions authorized
87 by law, the attorney general or prosecuting attorney
88 may bring an action in the name of the state against
89 such charitable organization and its officers, such
90 professional fund-raising counsel or professional solici-
91 tor or any other person who has violated this article or
92 who has participated or is about to participate in any
93 solicitation or collection by employing any device,
94 scheme, artifice, false representation or promise, to
95 defraud or obtain money or other property, to enjoin
96 such charitable organization or professional fund-
97 raising counsel or professional solicitor or other person
98 from continuing such violation, solicitation or collection,
99 or from engaging therein or from doing any acts in
100 furtherance thereof and for such other relief as the court
101 deems appropriate.

102 (g) In addition to the foregoing, any charitable
103 organization, professional fund-raising counsel or
104 professional solicitor who willfully and knowingly
105 violates any provisions of this article by employing any
106 device, scheme, artifice, false representation or promise
107 with intent to defraud or obtain money or other property
108 shall be guilty of a misdemeanor, and, upon conviction
109 thereof, for a first offense, shall be fined not less than
110 one hundred dollars nor more than five hundred dollars,
111 or be confined in the county jail not more than six
112 months, or be both fined and imprisoned; and for a
113 second and any subsequent offense, shall be fined not
114 less than five hundred dollars nor more than one
115 thousand dollars, or confined in the county jail not more
116 than one year, or be both fined and imprisoned.

117 At any proceeding under this section, the court shall
118 also determine whether it is possible to return to the
119 contributors the contributions which were thereby
120 obtained.

121 If the court finds that the said contributions are
122 readily returnable to the original contributors, it may
123 order the money to be placed in the custody and control
124 of a general receiver, appointed pursuant to the
125 provisions of article six, chapter fifty-one of this code,
126 who shall be responsible for its proper disbursement to
127 such contributors.

128 If the court finds that: (1) It is impossible to obtain
129 the names of over one half the persons who were
130 solicited and in violation of this article, or (2) if the
131 majority of individual contributions was of an amount
132 less than five dollars, or (3) if the cost to the state of
133 returning these contributions is equal to or more than
134 the total sum to be refunded, the court shall order the
135 money to be placed in the custody and control of a
136 general receiver appointed pursuant to the provisions of
137 article six, chapter fifty-one of this code. The general
138 receiver shall maintain this money pursuant to the
139 provisions of article eight, chapter thirty-six of this code.

CHAPTER 42

(H. B. 2094—By Delegate Davis and Delegate Flanigan)

[Passed March 9, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to repeal articles seven, eight and nine, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section forty-two, article seven, chapter thirty-eight of said code; to amend and reenact section eleven, article eight of said chapter thirty-eight; to amend and reenact section one hundred thirty, article two, chapter forty-six-a of said code; to amend and reenact sections one,

thirteen and fifteen, article two, chapter forty-eight of said code; to further amend article two of said chapter forty-eight by adding thereto a new section, designated section fifteen-a; and to further amend said code by adding thereto a new chapter, designated chapter forty-eight-a, relating to the enforcement of support and other family obligations generally; establishing the priority of support obligations over other garnishment of wages; providing that exemptions from levy shall not affect claims for support; establishing the priority of support claims over garnishments arising out of a consumer credit sale or consumer loan; defining the terms "earnings", "disposable earnings" and "income"; providing that in divorce actions, temporary and permanent support orders will require that health care insurance coverage be paid for by the noncustodial parent; requiring support orders to include a provision for automatic withholding from income if arrearages in support occur; enacting the "Family Obligations Enforcement Act"; setting forth the legislative purpose and intent; defining certain terms related to the enforcement of support obligations; establishing the West Virginia child advocate office; stating the legislative purpose and intent and describing the responsibility of the child advocate office; recognizing the acceptance of federal purposes and the need for compliance with federal requirements and standards; providing for the appointment of the director of the child advocate office; describing the qualifications of the director; requiring an oath and bond; providing that the director may not hold other office or engage in political activity; continuing the functions and responsibilities of the office of child support enforcement in the child advocate office; prescribing how the child advocate office is to be organized; describing the powers and duties of the director; authorizing the director to enter into cooperative agreements; establishing a parent locator service; requiring the child advocate office to cooperate with other states in the enforcement of domestic relations obligations; prescribing how amounts collected as support are to be distributed; setting forth when support payments are to be made to the child advocate office;

authorizing the child advocate office to establish an automatic data processing and retrieval system; establishing procedures for obtaining support from federal tax refunds, state income tax refunds, unemployment compensation and workers' compensation; establishing procedures for providing information to credit reporting agencies; requiring the child advocate office to publicize child support enforcement services; authorizing the director to promulgate legislative rules governing the waiver of fees; establishing a revenue fund in the state treasury to be known as the "Family Law Masters' Fund"; creating a position within the child advocate office of an employee to be known as the children's advocate; providing for location of the children's advocates; setting forth the duties of the children's advocates; requiring annual statement of accounts to be provided to each obligee and obligor; providing for the enforcement of custody and visitation orders; requiring investigations of support and visitation orders and petitioning for enforcement and modification; providing for filling vacancies in the position of children's advocate and the appointment of an interim children's advocate; providing for the appointment of family law masters by the governor; fixing the salary of the master and his or her secretary-clerk; providing for the geographic distribution of the offices of the family law master; describing the actions to be heard by the family law master; establishing hearing procedures; providing for the entry of default orders and temporary orders; authorizing the master to enter master's final orders; providing for review of a master's action or a master's final order; establishing the review by the circuit court, form of petition for review, brief in opposition and review; defining remedies for the enforcement of support obligations and visitations; establishing an action to obtain an order for support of a minor child; providing for a collection of arrearages through a writ of execution, suggestion or suggestee execution; providing for the withholding of income of amounts payable as support; providing for a source of income to be liable to an obligee for any amount which the source of income fails to withhold; making it a misdemeanor for source

of income to discharge, refuse to employ, or take disciplinary action against an obligor and setting forth the penalty therefor; providing for liens against real and personal property for overdue support; authorizing the children's advocate to enforce support orders through civil or criminal contempt proceedings, and setting forth the penalty for contempt; requiring the posting of bonds or giving security to guarantee payment of overdue support; authorizing the children's advocate to enforce visitation orders through civil or criminal contempt proceedings, and setting forth the penalty for contempt; describing procedures for cases before the children's advocate; providing for a civil action to establish paternity; providing for a statute of limitations for paternity actions; setting forth medical testing procedures to aid in the determination of paternity; providing for support to be paid upon the establishment of paternity; providing for the representation of parties; and enacting the "Revised Uniform Reciprocal Enforcement of Support Act."

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 38. LIENS.

Chapter

38. Liens.

46A. West Virginia Consumer Credit and protection Act.

48. Domestic Relations.

48A. Enforcement of Family Obligations.

Article

7. Attachment.

8. Exemptions from Levy.

ARTICLE 7. ATTACHMENT.**§38-7-42. Priority of attachments.**

1 (a) Except as otherwise provided in subsection (b) of
2 this section, the attachment first served on the same
3 personal property, or on the person having such
4 property in his possession, or on the person indebted to
5 the defendant in the attachment suit, shall have priority
6 of lien; and the officer making the levy shall note on the
7 order of attachment the day and hour at which the levy
8 is made: *Provided*, That where two or more attachments
9 are delivered to the same officer at different times to
10 be served, he shall serve them in the order in which he
11 received them, and when they are delivered at the same
12 time they shall be served at the same time, and, if more
13 than one of such attachment be sustained, such of them
14 as are sustained shall be satisfied pro rata out of the
15 proceeds of the attached property.

16 (b) No garnishment of wages governed by the provi-
17 sions of this article will be given priority over a
18 voluntary assignment of wages to fulfill a support
19 obligation, a garnishment of wages to collect arrearages
20 in support payments, or a notice of withholding from
21 wages of amounts payable as support, notwithstanding
22 the fact that the garnishment in question or the
23 judgment upon which it is based may have preceded the
24 support-related assignment, garnishment, or notice of
25 withholding in point of time or filing.

ARTICLE 8. EXEMPTIONS FROM LEVY.**§38-8-11. No exemption from claims for child or spousal support, purchase money or taxes.**

1 No exemption claimed under the preceding sections of
2 this article, or any of them, shall affect or impair any
3 claim for child or spousal support established or
4 enforced under the provisions of chapter forty-eight or
5 chapter forty-eight-a of this code, the purchase money
6 of the personal estate in respect to which such exemp-

7 tion is claimed, or any proceeding for the collection of
8 taxes, or county or district or municipal levies. Any
9 increase in such exemption provided by a prior enact-
10 ment of other sections of this article shall not be
11 applicable to liens and all other debts and liabilities
12 contracted and incurred prior to the effective date of the
13 prior enactment of such sections.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

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

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

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

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

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

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

17 (b) The amount by which his disposable earnings for
18 that week exceed thirty times the federal minimum
19 hourly wage prescribed by section 6(a)(1) of the "Fair
20 Labor Standards Act of 1938", U.S.C. Title 19,
21 §206(a)(1), in effect at the time the earnings are payable.

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

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

41 (4) No garnishment governed by the provisions of this
 42 section will be given priority over a voluntary assign-
 43 ment of wages to fulfill a support obligation, a garnish-
 44 ment to collect arrearages in support payments, or a
 45 notice of withholding from wages of amounts payable as
 46 support, notwithstanding the fact that the garnishment
 47 in question or the judgment upon which it is based may
 48 have preceded the support-related assignment,
 49 garnishment, or notice of withholding in point of time
 50 or filing.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-1. Definitions.

§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

§48-2-15a. Withholding from income.

§48-2-1. Definitions.

1 (a) "Alimony" means the allowance which a person
 2 pays to or in behalf of the support of his or her spouse
 3 or divorced spouse while they are separated or after they
 4 are divorced. The payment of alimony may be required
 5 by court order or by the terms of a separation agree-
 6 ment. Alimony may be paid in a lump sum or paid in
 7 installments as periodic alimony. Alimony includes

8 temporary alimony as that term is used in section
9 thirteen of this article, as well as alimony as that term
10 is used in section fifteen of this article and elsewhere
11 throughout this article.

12 (b) "Antenuptial agreement" or "prenuptial agree-
13 ment" means an agreement between a man and woman
14 before marriage, but in contemplation and generally in
15 consideration of marriage, whereby the property rights
16 and interests of the prospective husband and wife, or
17 both of them, are determined, or where property is
18 secured to either or both of them, to their separate
19 estate, or to their children or other persons. An
20 antenuptial agreement may include provisions which
21 define the respective property rights of the parties
22 during the marriage, or in the event of the death of
23 either or both of the parties, and may provide for the
24 disposition of marital property upon an annulment of
25 the marriage or a divorce or separation of the parties.
26 A prenuptial agreement is void if at the time it is made:

27 (1) Either of the parties is a minor; or

28 (2) The female party to the agreement is pregnant;
29 *Provided*, That such female shall be presumed for the
30 purposes of this article to have been pregnant at the
31 time the agreement was made if she gives birth to a
32 child at any time within the nine month period next
33 following the execution of the agreement.

34 (c) "Earnings" means compensation paid or payable
35 for personal services, whether denominated as wages,
36 salary, commission, bonus, or otherwise, and includes
37 periodic payments pursuant to a pension or retirement
38 program. "Disposable earnings" means that part of the
39 earnings of any individual remaining after the deduc-
40 tion from those earnings of any amounts required by law
41 to be withheld.

42 (d) "Income" means any of the following:

43 (1) Commissions, earnings, salaries, wages, and other
44 income due or to be due in the future to an individual
45 from his employer and successor employers;

46 (2) Any payment due or to be due in the future to an

47 individual from a profit-sharing plan, a pension plan, an
48 insurance contract, an annuity, social security, unem-
49 ployment compensation, supplemental employment
50 benefits, and workers' compensation;

51 (3) Any amount of money which is owing to an
52 individual as a debt from an individual, partnership,
53 association, public or private corporation, the United
54 States or any federal agency, this state or any political
55 subdivision of this state, any other state or a political
56 subdivision of another state, or any other legal entity
57 which is indebted to the obligor.

58 (e) "Marital property" means:

59 (1) All property and earnings acquired by either
60 spouse during a marriage, including every valuable
61 right and interest, corporeal or incorporeal, tangible or
62 intangible, real or personal, regardless of the form of
63 ownership, whether legal or beneficial, whether individ-
64 ually held, held in trust by a third party, or whether
65 held by the parties to the marriage in some form of co-
66 ownership such as joint tenancy or tenancy in common,
67 joint tenancy with the right of survivorship, or any other
68 form of shared ownership recognized in other jurisdic-
69 tions without this state, except that marital property
70 shall not include separate property as defined in
71 subsection (d) of this section; and

72 (2) The amount of any increase in value in the separate
73 property of either of the parties to a marriage, which
74 increase results from (A) an expenditure of funds which
75 are marital property, including an expenditure of such
76 funds which reduces indebtedness against separate
77 property, extinguishes liens, or otherwise increases the
78 next value of separate property, or (B) work performed
79 by either or both of the parties during the marriage.

80 The definitions of "marital property" contained in this
81 subsection and "separate property" contained in subsec-
82 tion (d) of this section shall have no application outside
83 the provisions of this article, and the common law as to
84 the ownership of the respective property and earnings
85 of a husband and wife, as altered by the provisions of
86 article three of this chapter and other provisions of this

87 code, are not abrogated by implication or otherwise,
88 except as expressly provided for by the provisions of this
89 article as such provisions are applied in actions brought
90 under this article or for the enforcement of rights under
91 the article.

92 (f) "Separate property" means:

93 (1) Property acquired by a person before marriage; or

94 (2) Property acquired by a person during marriage in
95 exchange for separate property which was acquired
96 before the marriage; or

97 (3) Property acquired by a person during marriage,
98 but excluded from treatment as marital property by a
99 valid agreement of the parties entered into before or
100 during the marriage; or

101 (4) Property acquired by a party during marriage by
102 gift, bequest, devise, descent or distribution; or

103 (5) Property acquired by a party during a marriage
104 but after the separation of the parties and before the
105 granting of a divorce, annulment or decree of separate
106 maintenance; and

107 (6) Any increase in the value of separate property as
108 defined in subdivision (1), (2), (3), (4) or (5) of this
109 subsection which is due to inflation or to a change in
110 market value resulting from conditions outside the
111 control of the parties.

112 (g) "Separation" or "separation of the parties" means
113 the separation of the parties next preceding the filing
114 of an action under the provisions of this article, which
115 separation continues, without the parties cohabiting or
116 otherwise living together as husband and wife, and
117 without interruption.

118 (h) "Separation agreement" means a written agree-
119 ment entered into by a husband and wife whereby they
120 agree to live separate and apart from each other and,
121 in connection therewith, agree to settle their property
122 rights; or to provide for the custody and support of their
123 minor child or children, if any; or to provide for the
124 payment or waiver of alimony by either party to the

125 other; or to otherwise settle and compromise issues
126 arising out of their marital rights and obligations.
127 Insofar as an antenuptial agreement as defined in
128 subsection (b) of this section affects the property rights
129 of the parties or the disposition of property upon an
130 annulment of the marriage, or a divorce or separation
131 of the parties, such antenuptial agreement shall be
132 regarded as a separation agreement under the provi-
133 sions of this article.

**§48-2-13. Temporary relief during pendency of action for
divorce, annulment or separate
maintenance.**

1 (a) At the time of the filing of the complaint or at any
2 time after the commencement of an action for divorce,
3 annulment or separate maintenance under the provi-
4 sions of this article, and upon motion for temporary
5 relief, notice of hearing and hearing, the court may
6 order all or any portion of the following temporary
7 relief, which order shall govern the marital rights and
8 obligations of the parties during the pendency of the
9 action:

10 (1) The court may require either party to pay
11 temporary alimony in the form of periodic installments,
12 or a lump sum, or both, for the maintenance of the other
13 party.

14 (2) The court may provide for the custody of minor
15 children of the parties subject to such rights of
16 visitation, both in and out of the residence of the
17 custodial parent or other person or persons having
18 custody, as may be appropriate under the
19 circumstances.

20 (3) The court may require either party to pay
21 temporary child support in the form of periodic
22 installments for the maintenance of the minor children
23 of the parties.

24 (4) The court may compel either party to pay attor-
25 ney's fees and court costs reasonably necessary to enable
26 the other party to prosecute or defend the action in the
27 trial court. The question of whether or not a party is

28 entitled to temporary alimony shall not be decisive of
29 that party's right to a reasonable allowance of attorney's
30 fees and court costs. An order for temporary relief
31 awarding attorney fees and court costs may be modified
32 at any time during the pendency of the action, as the
33 exigencies of the case or equity and justice may require,
34 including, but not limited to, a modification which
35 would require full or partial repayment of fees and costs
36 by a party to the action to whom or on whose behalf
37 payment of such fees and costs was previously ordered.
38 If an appeal be taken or an intention to appeal be stated,
39 the court may further order either party to pay attorney
40 fees and costs on appeal.

41 (5) As an incident to requiring the payment of
42 temporary alimony or temporary child support, the
43 court may order either party to continue in effect
44 existing policies of insurance covering the costs of health
45 care and hospitalization of the other party and the minor
46 children of the parties. If there is no such existing policy
47 or policies, the court shall order that such health care
48 insurance coverage be paid for by the noncustodial
49 parent, if the court determines that such health care
50 coverage is available to the noncustodial parent at a
51 reasonable cost. Payments made to an insurer pursuant
52 to this subdivision, either directly or by a deduction
53 from wages, shall be deemed to be temporary alimony
54 or temporary child support, in such proportion as the
55 court shall direct: *Provided*, That if the court does not
56 set forth in the order that a portion of such payments
57 is to be deemed temporary child support, then all such
58 payments made pursuant to this subdivision shall be
59 deemed to be temporary alimony.

60 (6) As an incident to requiring the payment of
61 temporary alimony or temporary child support, the
62 court may grant the exclusive use and occupancy of the
63 marital home to one of the parties during the pendency
64 of the action, together with all or a portion of the
65 household goods, furniture and furnishings, reasonably
66 necessary for such use and occupancy. The court may
67 require payments to third parties in the form of home
68 loan installments, land contract payments, rent, pay-

69 ments for utility services, property taxes, insurance
70 coverage or other expenses or charges reasonably
71 necessary for the use and occupancy of the marital
72 domicile. Payments made to a third party pursuant to
73 this subdivision shall be deemed to be temporary
74 alimony or temporary child support, in such proportion
75 as the court shall direct: *Provided*, That if the court does
76 not set forth in the order that a portion of such payments
77 is to be deemed temporary child support, then all such
78 payments made pursuant to this subdivision shall be
79 deemed to be temporary alimony: *Provided, however*,
80 That the court may order such payments to be made
81 without denominating them either as temporary alim-
82 ony or temporary child support, reserving such decision
83 until such time as the court determines the interests of
84 the parties in marital property and equitably divides the
85 same: *Provided further*, That at the time the court
86 determines the interests of the parties in marital
87 property and equitably divides the same, the court may
88 consider the extent to which payments made to third
89 parties under the provisions of this subdivision have
90 affected the rights of the parties in marital property,
91 and may treat such payments as a partial distribution
92 of marital property notwithstanding the fact that such
93 payments have been denominated temporary alimony or
94 temporary child support or not so denominated under
95 the provisions of this subdivision. Nothing contained in
96 this subdivision shall abrogate an existing contract
97 between either of the parties and a third party, or affect
98 the rights and liabilities of either party or a third party
99 under the terms of such contract.

100 (7) As an incident to requiring the payments of
101 temporary alimony, the court may grant the exclusive
102 use and possession of one or more motor vehicles to
103 either of the parties during the pendency of the action.
104 The court may require payments to third parties in the
105 form of automobile loan installments or insurance
106 coverage, and any such payments made pursuant to this
107 subdivision shall be deemed to be temporary alimony.
108 *Provided*, That the court may order such payments to
109 be made without denominating them as temporary
110 alimony, reserving such decision until such time as the

111 court determines the interests of the parties in marital
112 property and equitably divides the same: *Provided,*
113 *however,* That at the time the court determines the
114 interests of the parties in marital property and equit-
115 ably divides the same, the court may consider the extent
116 to which payments made to third parties under the
117 provisions of this subdivision have affected the rights of
118 the parties in marital property, and may treat such
119 payments as a partial distribution of marital property
120 notwithstanding the fact that such payments have been
121 denominated temporary alimony or not so denominated
122 under the provisions of this subdivision. Nothing
123 contained in this subdivision shall abrogate an existing
124 contract between either of the parties and a third party,
125 or affect the rights and liabilities of either party or a
126 third party under the terms of such contract.

127 (8) Where the pleadings include a specific request for
128 specific property or raise issues concerning the equita-
129 ble division of marital property, the court may enter
130 such order as is reasonably necessary to preserve the
131 estate of either or both of the parties, including the
132 imposition of a constructive trust, so that such property
133 be forthcoming to meet any order which may be made
134 in the action, and may compel either party to give
135 security to abide such order, or may require the
136 property in question to be delivered into the temporary
137 custody of a third party. The court may further order
138 either or both of the parties to pay the costs and
139 expenses of maintaining and preserving the property of
140 the parties during the pendency of the action: *Provided,*
141 That at the time the court determines the interest of the
142 parties in marital property and equitably divides the
143 same, the court may consider the extent to which
144 payments made for the maintenance and preservation of
145 property under the provisions of this subdivision have
146 affected the rights of the parties in marital property,
147 and may treat such payments as a partial distribution
148 of marital property. When appropriate, the court may
149 release all or any part of such protected property for
150 sale and substitute all or a portion of the proceeds of the
151 sale for such property.

152 (9) Unless a contrary disposition be found appropriate
153 and ordered pursuant to other provisions of this section,
154 then upon the motion of either party, the court may
155 compel the other party to deliver to the movant party
156 any of his or her separate estate which may be in the
157 possession or control of the respondent party, and may
158 make such further order as is necessary to prevent
159 either party from interfering with the separate estate
160 of the other.

161 (10) The court may enjoin either party from molesting
162 or interfering with the other, or otherwise imposing any
163 restraint on the personal liberty of the other, or
164 interfering with the custodial or visitation rights of the
165 other.

166 (b) In ordering temporary relief under the provisions
167 of this section, the court shall consider the financial
168 needs of the parties, the present employment income and
169 other recurring earnings of each party from any source,
170 their income-earning abilities, and the respective legal
171 obligations of each party to support himself or herself
172 and to support any other persons. Except in extraordi-
173 nary cases supported by specific findings set forth in the
174 order granting relief, payments of temporary alimony
175 and temporary child support are to be made from a
176 party's employment income and other recurring earn-
177 ings, and not from the corpus of a party's separate
178 estate, and an award of such relief shall not be
179 disproportionate to a party's ability to pay as disclosed
180 by the evidence before the court.

181 (c) At any time after a party is abandoned or deserted
182 or after the parties to a marriage have lived separate
183 and apart in separate places of abode without any
184 cohabitation, the party abandoned or either party living
185 separate and apart may apply for relief pursuant to this
186 section by instituting an action for divorce as provided
187 in section ten of this article, alleging that the plaintiff
188 reasonably believes that the period of abandonment or
189 of living separate and apart will continue for the period
190 prescribed by the applicable provisions of section four
191 of this article. If the period of abandonment or living
192 separate and apart continues for the period prescribed

193 by the applicable provisions of section four of this
194 article, the divorce action may proceed to a hearing as
195 provided in sections twenty-four and twenty-five of this
196 article without a new complaint being filed: *Provided*,
197 That the party desiring to proceed to a hearing shall
198 give the opposing party at least twenty days' notice of
199 the time, place and purpose of the hearing, unless the
200 opposing party shall have filed with the court a waiver
201 of notice of further proceedings, signed by such opposing
202 party. If such notice is required to be served, it shall
203 be served in the same manner as a complaint, regardless
204 of whether the opposing party has appeared or
205 answered.

206 (d) To facilitate the resolution of issues arising at a
207 hearing for temporary relief, the court may, or upon the
208 motion of either party shall, order each of the parties
209 to file with the court, and serve on the other party, a
210 sworn statement of each party's assets, liabilities and
211 employment income and other earnings from any
212 source. The statement shall be in such form and contain
213 such detailed information as the court may prescribe by
214 general order. In addition, the court may, or upon the
215 motion of either party shall, order the parties to comply
216 with the disclosure requirements set forth in section
217 thirty-three of this article, and, if necessary, continue
218 the hearing for temporary relief from time to time to
219 afford the parties an opportunity to obtain and provide
220 such information.

221 (e) An ex parte order granting all or part of the relief
222 provided for in this section may be granted without
223 written or oral notice to the adverse party if:

224 (1) It appears from specific facts shown by affidavit
225 or by the verified complaint that immediate and
226 irreparable injury, loss or damage will result to the
227 applicant before the adverse party or such party's
228 attorney can be heard in opposition. Such potential
229 injury, loss or damage may be anticipated when the
230 following conditions exist: *Provided*, That the following
231 list of conditions shall not be exclusive:

232 (A) There is a real and present threat of physical

233 injury to the applicant at the hands or direction of the
234 adverse party;

235 (B) The adverse party is preparing to quit the state
236 with a minor child or children of the parties, thus
237 depriving the court of jurisdiction in the matter of child
238 custody;

239 (C) The adverse party is preparing to remove property
240 from the state, or is preparing to transfer, convey,
241 alienate, encumber or otherwise deal with property
242 which could otherwise be subject to the jurisdiction of
243 the court and subject to judicial order under the
244 provisions of this section or section fifteen of this article;

245 And,

246 (2) The movant party or his or her attorney certifies
247 in writing the efforts, if any, which have been made to
248 give the notice, and the reasons supporting his claim
249 that notice should not be required.

250 (f) Every ex parte order granted without notice shall
251 be endorsed with the date and hour of issuance; shall
252 be filed forthwith in the circuit clerk's office and
253 entered of record; and shall set forth the finding of the
254 court that unless the order is granted without notice
255 there is probable cause to believe that existing condi-
256 tions will result in immediate and irreparable injury,
257 loss or damage to the movant party before the adverse
258 party or his or her attorney can be heard in opposition.
259 The order granting ex parte relief shall fix a time for
260 a hearing for temporary relief to be held within a
261 reasonable time, not to exceed twenty days, unless
262 before the time so fixed for hearing, such hearing is
263 continued for good cause shown or with the consent of
264 the party against whom the ex parte order is directed.
265 The reasons for the continuance shall be entered of
266 record. Within the time limits described herein, when
267 an ex parte order is made, a motion for temporary relief
268 shall be set down for hearing at the earliest possible
269 time and shall take precedence of all matters except
270 older matters of the same character. If the party who
271 obtained the ex parte order fails to proceed with a
272 motion for temporary relief, the court shall set aside the

273 ex parte order. At any time after ex parte relief is
274 granted, and on two days' notice to the party who
275 obtained such relief or on such shorter notice as the
276 court may direct, the adverse party may appear and
277 move the court to set aside or modify the ex parte order
278 on the grounds that the effects of such order are onerous
279 or otherwise improper. In such event, the court shall
280 proceed to hear and determine such motion as expedi-
281 tiously as the ends of justice require.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

1 (a) Upon ordering a divorce or granting a decree of
2 separate maintenance, the court may require either
3 party to pay alimony in the form of periodic instal-
4 lments, or a lump sum, or both, for the maintenance of
5 the other party. Payments of alimony and child support
6 are to be ordinarily made from a party's employment
7 income and other recurring earnings, but in cases where
8 the employment income and other recurring earnings
9 are not sufficient to adequately provide for payments of
10 alimony and child support, the court may, upon specific
11 findings set forth in the order, order the party required
12 to make such payments to make the same from the
13 corpus of his or her separate estate. An award of such
14 relief shall not be disproportionate to a party's ability
15 to pay as disclosed by the evidence before the court.

16 (b) Upon ordering the annulment of a marriage or a
17 divorce or granting of decree of separate maintenance,
18 the court may further order all or any part of the
19 following relief:

20 (1) The court may provide for the custody of minor
21 children of the parties, subject to such rights of
22 visitation, both in and out of the residence of the
23 custodial parent or other person or persons having
24 custody, as may be appropriate under the
25 circumstances. In addition, the court may, in its
26 discretion, make such further order as it shall deem
27 expedient, concerning the grant of reasonable visitation
28 rights to any grandparent or grandparents of the minor
29 children upon application, if the grandparent or

30 grandparents are related to such minor child through
31 a party:

32 (A) Whose whereabouts are unknown, or

33 (B) Who did not answer or otherwise appear and
34 defend the cause of action.

35 (2) The court may require either party to pay child
36 support in the form of periodic installments for the
37 maintenance of the minor children of the parties.

38 (3) As an incident to requiring the payment of alimony
39 or child support, the court may order either party to
40 continue in effect existing policies of insurance covering
41 the costs of health care and hospitalization of the other
42 party and the minor children of the parties: *Provided,*
43 That if the other party is no longer eligible to be covered
44 by such insurance because of the granting of an
45 annulment or divorce, the court may require a party to
46 substitute such insurance with a new policy to cover the
47 other party, or may consider the prospective cost of such
48 insurance in awarding alimony to be paid in periodic
49 installments. If there is no such existing policy or
50 policies, the court shall order such health care insurance
51 coverage to be paid for by the noncustodial parent, if
52 the court determines that such health care insurance
53 coverage is available to the noncustodial parent at a
54 reasonable cost. Payments made to an insurer pursuant
55 to this subdivision, either directly or by a deduction
56 from wages, shall be deemed to be alimony, child
57 support or installment payments for the distribution of
58 marital property, in such proportion as the court shall
59 direct: *Provided,* That if the court does not set forth in
60 the order that a portion of such payments is to be
61 deemed child support or installment payments for the
62 distribution of marital property, then all such payments
63 made pursuant to this subdivision shall be deemed to be
64 alimony: *Provided, however,* That the designation of
65 insurance coverage as alimony under the provisions of
66 this subdivision shall not, in and of itself, give rise to
67 a subsequent modification of the order to provide for
68 alimony other than insurance for covering the costs of
69 health care and hospitalization.

70 (4) As an incident to requiring the payment of alimony
71 or child support, the court may grant the exclusive use
72 and occupancy of the marital home to one of the parties,
73 together with all or a portion of the household goods,
74 furniture and furnishings reasonably necessary for
75 such use and occupancy. Such use and occupancy shall
76 be for a definite period, ending at a specific time set
77 forth in the order, subject to modification upon the
78 petition of either party. Except in extraordinary cases
79 supported by specific findings set forth in the order
80 granting relief, a grant of the exclusive use and
81 occupancy of the marital home shall be limited to those
82 situations where such use and occupancy is reasonably
83 necessary to accommodate the rearing of minor children
84 of the parties. The court may require payments to third
85 parties in the form of home loan installments, land
86 contract payments, rent, payments for utility services,
87 property taxes, insurance coverage, or other expenses or
88 charges reasonably necessary for the use and occu-
89 pancy of the marital domicile. Payments made to a third
90 party pursuant to this subdivision for the benefit of the
91 other party shall be deemed to be alimony, child support
92 or installment payments for the distribution of marital
93 property, in such proportion as the court shall direct:
94 *Provided*, That if the court does not set forth in the order
95 that a portion of such payments is to be deemed child
96 support or installment payments for the distribution of
97 marital property, then all such payments made
98 pursuant to this subdivision shall be deemed to be
99 alimony. Nothing contained in this subdivision shall
100 abrogate an existing contract between either of the
101 parties and a third party, or affect the rights and
102 liabilities of either party or a third party under the
103 terms of such contract.

104 (5) As an incident to requiring the payment of
105 alimony, the court may grant the exclusive use and
106 possession of one or more motor vehicles to either of the
107 parties. The court may require payments to third
108 parties in the form of automobile loan installments or
109 insurance coverage, and any such payments made
110 pursuant to this subdivision for the benefit of the other
111 party shall be deemed to be alimony or installment

112 payments for the distribution of marital property, as the
113 court may direct. Nothing contained in this subsection
114 shall abrogate an existing contract between either of the
115 parties and a third party, or affect the rights and
116 liabilities of either party or a third party under the
117 terms of such contract.

118 (6) Where the pleadings include a specific request for
119 specific property or raise issues concerning the equita-
120 ble division of marital property as defined in section one
121 of this article, the court shall order such relief as may
122 be required to effect a just and equitable distribution
123 of the property and to protect the equitable interests of
124 the parties therein.

125 (7) Unless a contrary disposition be found appropriate
126 and ordered pursuant to other provisions of this section,
127 then upon the motion of either party, the court may
128 compel the other party to deliver to the movant party
129 any of his or her separate estate which may be in the
130 possession or control of the respondent party, and may
131 make such further order as is necessary to prevent
132 either party from interfering with the separate estate
133 of the other.

134 (8) The court may enjoin either party from the
135 molesting or interfering with the other, or otherwise
136 imposing any restraint on the personal liberty of the
137 other, or interfering with the custodial or visitation
138 rights of the other.

139 (9) The court may order either party to take necessary
140 steps to transfer utility accounts and other accounts for
141 recurring expenses from the name of one party into the
142 name of the other party or from the joint names of the
143 parties into the name of one party. Nothing contained
144 in this subdivision shall affect the liability of the parties
145 for indebtedness on any such account incurred before
146 the transfer of such account.

147 (c) In any case where an annulment or divorce is
148 denied, the court shall retain jurisdiction of the case and
149 may order all or any portion of the relief provided for
150 in subsections (a) and (b) of this section which has been
151 demanded or prayed for in the pleadings.

152 (d) In any case where a divorce or annulment is
153 granted in this state upon constructive service of
154 process, and personal jurisdiction is thereafter obtained
155 of the defendant in such case, the court may order all
156 or any portion of the relief provided for in subsections
157 (a) and (b) of this section which has been demanded or
158 prayed for in the pleadings.

159 (e) At any time after the entry of an order pursuant
160 to the provisions of this section, the court may, upon the
161 verified petition of either of the parties, revise or alter
162 such order concerning the maintenance of the parties,
163 or either of them, and make a new order concerning the
164 same, as the altered circumstances or needs of the
165 parties may render necessary to meet the ends of justice;
166 and the court may also from time to time afterward, on
167 the verified petition of either of the parties or other
168 proper person having actual or legal custody of the
169 minor child or children of the parties, revise or alter
170 such order concerning the custody and maintenance of
171 the children, and make a new order concerning the
172 same, as the circumstances of the parents or other
173 proper person or persons and the benefit of the children
174 may require. In granting such relief, the court may,
175 where other means are not conveniently available, alter
176 any prior order of the court with respect to the
177 distribution of marital property, if such property is still
178 held by the parties, and if necessary to give effect to a
179 modification of alimony, child support or child custody
180 or necessary to avoid an inequitable or unjust result
181 which would be caused by the manner in which the
182 modification will affect the prior distribution of marital
183 property.

184 (f) In every case where a separation agreement is the
185 basis for an award of alimony, the court, in approving
186 the agreement, shall examine the agreement to ascer-
187 tain whether it clearly provides for alimony to continue
188 beyond the death of the payor party or to cease in such
189 event. Where alimony is to be paid pursuant to the terms
190 of a separation agreement which does not state whether
191 the payment of alimony is to continue beyond the death
192 of the payor party or is to cease, or where the parties

193 have not entered into a separation agreement and
194 alimony is to be awarded, the court shall specifically
195 state as a part of its order whether such payments of
196 alimony are to be continued beyond the death of the
197 payor party or cease.

198 (g) In every case where a separation agreement is the
199 basis for an award of alimony, the court, in approving
200 the agreement, shall examine the agreement to ascer-
201 tain whether it clearly provides for alimony to continue
202 beyond the remarriage of the payee party or to cease in
203 such event. Where alimony is to be paid pursuant to the
204 terms of a separation agreement which does not state
205 whether the payment of alimony is to continue beyond
206 the remarriage of the payee party or is to cease, or
207 where the parties have not entered into a separation
208 agreement and alimony is to be awarded, the court shall
209 specifically state as a part of its order whether such
210 payments of alimony are to be continued beyond the
211 remarriage of the payee party or cease.

212 (h) In addition to the statement provided for in
213 subsection (d), section thirteen of this article and in
214 addition or in lieu of the disclosure requirements set
215 forth in section thirty-three of this article, the court may
216 order accounts to be taken as to all or any part of
217 marital property or the separate estates of the parties,
218 and may direct that the accounts be taken as of the date
219 of the marriage, the date upon which the parties
220 separated, or any other time deemed to be appropriate
221 in assisting the court in the determination and equitable
222 division of property.

223 (i) In determining whether alimony is to be awarded,
224 or in determining the amount of alimony, if any, to be
225 awarded under the provisions of this section, the court
226 shall consider and compare the fault or misconduct of
227 either or both of the parties and the effect of such fault
228 or misconduct as a contributing factor to the deteriora-
229 tion of the marital relationship. However, alimony shall
230 not be awarded in any case where both parties prove
231 grounds for divorce and are denied a divorce, nor shall
232 an award of alimony under the provisions of this section
233 be ordered which directs the payment of alimony to a

234 party determined to be at fault, when, as a grounds
235 granting the divorce, such party is determined by the
236 court:

237 (1) To have committed adultery; or

238 (2) To have been convicted for the commission of a
239 crime which is a felony, subsequent to the marriage, if
240 such conviction has become final; or

241 (3) To have actually abandoned or deserted his or her
242 spouse for six months.

243 (j) Whenever under the terms of this section or section
244 thirteen of this article a court enters an order requiring
245 the payment of alimony or child support, if the court
246 anticipates the payment of such alimony or child
247 support or any portion thereof to be paid out of
248 "disposable retired or retainer pay" as that term is
249 defined in 10 U.S.C. Sec. 1408, relating to members or
250 former members of the uniformed services of the United
251 States, the court shall specifically provide for the
252 payment of an amount, expressed in dollars or as a
253 percentage of disposable retired or retainer pay, from
254 the disposable retired or retainer pay of the payor party
255 to the payee party.

§48-2-15a. Withholding from income.

1 (a) On and after the effective date of this section, every
2 order entered or modified under the provisions of this
3 article which requires the payment of child support or
4 spousal support shall include a provision for automatic
5 withholding from income of the obligor if arrearages in
6 such support occur, in order to facilitate income
7 withholding as a means of collecting support when such
8 arrearages occur.

9 (b) Every such order as described in subsection (a)
10 above shall contain language authorizing income
11 withholding to commence without further court action:

12 (1) When the support payments required by such
13 order are thirty days or more in arrears if the order
14 requires payments to be made in monthly installments;

15 (2) When the support payments required by such

16 order are twenty-eight days or more in arrears if the
17 order requires payments to be paid in weekly or bi-
18 weekly installments; or

19 (3) When the obligor requests the child advocate office
20 to commence income withholding.

21 (c) For the purposes of this section, the number of days
22 support payments are in arrears shall be considered to
23 be the total cumulative number of days during which
24 payments required by a court order have been delin-
25 quent, whether or not such days are consecutive.

26 (d) The supreme court of appeals shall make available
27 to the circuit courts standard language to be included
28 in all such orders, so as to conform such orders to the
29 applicable requirements of state and federal law
30 regarding the withholding from income of amounts
31 payable as support.

32 (e) Every support order entered by a circuit court of
33 this state prior to the effective date of this section shall
34 be considered to provide for an order of income
35 withholding by operation of law, notwithstanding the
36 fact that such support order does not in fact provide for
37 an order of withholding.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

1. General Provisions.
2. West Virginia Child Advocate Office.
3. Children's Advocate.
4. Proceedings Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitation.
6. Establishment of Paternity.
7. Revised Uniform Reciprocal Enforcement of Support Act.

ARTICLE 1. GENERAL PROVISIONS.

- §48A-1-1. General provisions.
§48A-1-2. Statement of purpose and intent.
§48A-1-3. Definitions.

§48A-1-1. Short title.

1 This chapter shall be known and cited as the "Family

2 Obligations Enforcement Act.”

§48A-1-2. Statement of purpose and intent.

1 It is the purpose of the Legislature in enacting this
2 chapter to improve and facilitate support enforcement
3 efforts in this state, with the primary goal being to
4 establish and enforce reasonable child support orders
5 and thereby improve opportunities for children. It is the
6 intent of the Legislature that to the extent practicable,
7 the laws of this state should encourage and require a
8 child's parents to meet the obligation of providing that
9 child with adequate food, shelter, clothing, education,
10 and health and child care.

§48A-1-3. Definitions.

1 As used in this chapter:

2 (1) “Automatic data processing and retrieval system”
3 means a computerized data processing system designed
4 to do the following:

5 (A) To control, account for, and monitor all of the
6 factors in the support enforcement collection and
7 paternity determination process, including, but not
8 limited to:

9 (i) Identifiable correlation factors (such as social
10 security numbers, names, dates of birth, home addresses
11 and mailing addresses of any individual with respect to
12 whom support obligations are sought to be established
13 or enforced and with respect to any person to whom such
14 support obligations are owing) to assure sufficient
15 compatibility among the systems of different jurisdic-
16 tions to permit periodic screenings to determine
17 whether such individual is paying or is obligated to pay
18 support in more than one jurisdiction;

19 (ii) Checking of records of such individuals on a
20 periodic basis with federal, interstate, intrastate, and
21 local agencies;

22 (iii) Maintaining the data necessary to meet applicable
23 federal reporting requirements on a timely basis; and

24 (iv) Delinquency and enforcement activities;

25 (B) To control, account for, and monitor the collection
26 and distribution of support payments (both interstate
27 and intrastate), the determination, collection and
28 distribution of incentive payments (both interstate and
29 intrastate), and the maintenance of accounts receivable
30 on all amounts owed, collected and distributed; and

31 (C) To control, account for, and monitor the costs of
32 all services rendered, either directly or by exchanging
33 information with state agencies responsible for main-
34 taining financial management and expenditure
35 information;

36 (D) To provide access to the records of the department
37 of human services for aid to families with dependent
38 children in order to determine if a collection of a support
39 payment causes a change affecting eligibility for or the
40 amount of aid under such program;

41 (E) To provide for security against unauthorized
42 access to, or use of, the data in such system;

43 (F) To facilitate the development and improvement of
44 the income withholding and other procedures designed
45 to improve the effectiveness of support enforcement
46 through the monitoring of support payments, the
47 maintenance of accurate records regarding the payment
48 of support, and the prompt provision of notice to
49 appropriate officials with respect to any arrearages in
50 support payments which may occur; and

51 (G) To provide management information on all cases
52 from initial referral or application through collection
53 and enforcement.

54 (2) "Chief judge" means the following:

55 (A) The circuit judge in a judicial circuit having only
56 one circuit judge, except for the twenty-third and thirty-
57 first judicial circuits;

58 (B) In the twenty-third and thirty-first judicial
59 circuits, a chief judge designated by the judges thereof
60 from among themselves by general order, to act as chief
61 judge for both circuits for the purposes of this chapter:
62 *Provided*, That if the judges cannot agree as to who shall

63 act as chief judge, then a chief judge shall be designated
64 for the purposes of this chapter by the supreme court
65 of appeals; or

66 (C) The chief judge of the circuit court in a judicial
67 circuit having two or more circuit judges.

68 (3) "Child advocate office" means the office within the
69 department of human services created under the
70 provisions of article two of this chapter, intended by the
71 Legislature to be the single and separate organizational
72 unit of state government administering programs of
73 child and spousal support enforcement and meeting the
74 staffing and organizational requirements of the
75 secretary of the federal department of health and
76 human services.

77 (4) "Children's advocate" or "advocate" means a person
78 appointed to such position under the provisions of
79 section two, article three of this chapter.

80 (5) "Court" means a circuit court of this state, unless
81 the context in which such term is used clearly indicates
82 that reference to some other court is intended. For the
83 purposes of this chapter, the circuit courts of the twenty-
84 third and thirty-first judicial circuits shall be consi-
85 dered as being in a single judicial circuit.

86 (6) "Court of competent jurisdiction" means a circuit
87 court within this state, or a court or administrative
88 agency of another state having jurisdiction and due legal
89 authority to deal with the subject matter of the
90 establishment and enforcement of support obligations.
91 Whenever in this chapter reference is made to an order
92 of a court of competent jurisdiction, or similar wording,
93 such language shall be interpreted so as to include
94 orders of an administrative agency entered in a state
95 where enforceable orders may by law be properly made
96 and entered by such administrative agency.

97 (7) "Custodial parent" or "custodial parent of a child"
98 means a parent who has been granted custody of a child
99 by a court of competent jurisdiction. "Noncustodial
100 parent" means a parent of a child with respect to whom
101 custody has been adjudicated with the result that such

102 parent has not been granted custody of the child.

103 (8) "Domestic relations matter" means any circuit
104 court proceeding involving child custody, child visita-
105 tion, child support or alimony.

106 (9) "Earnings" means compensation paid or payable
107 for personal services, whether denominated as wages,
108 salary, commission, bonus, or otherwise, and includes
109 periodic payments pursuant to a pension or retirement
110 program. "Disposable earnings" means that part of the
111 earnings of any individual remaining after the deduc-
112 tion from those earnings of any amounts required by law
113 to be withheld.

114 (10) "Employer" means any individual, sole proprie-
115 torship, partnership, association, public or private
116 corporation, the United States or any federal agency,
117 this state or any political subdivision of this state, any
118 other state or political subdivision of another state, and
119 any other legal entity which hires and pays an individ-
120 ual for his services.

121 (11) "Guardian of the property of a child" means a
122 person lawfully invested with the power, and charged
123 with the duty, of managing and controlling the estate
124 of a child.

125 (12) "Income" means any of the following:

126 (A) Commissions, earnings, salaries, wages, and other
127 income due or to be due in the future to an obligor from
128 his employer and successor employers;

129 (B) Any payment due or to be due in the future to an
130 obligor from a profit-sharing plan, a pension plan, an
131 insurance contract, an annuity, social security, unem-
132 ployment compensation, supplemental employment
133 benefits, and workers' compensation;

134 (C) Any amount of money which is owing to the
135 obligor as a debt from an individual, partnership,
136 association, public or private corporation, the United
137 States or any federal agency, this state or any political
138 subdivision of this state, any other state or a political
139 subdivision of another state, or any other legal entity

140 which is indebted to the obligor.

141 (13) "Individual entitled to support enforcement
142 services under the provisions of this chapter" means:

143 (A) An individual who has applied for or is receiving
144 services from the child advocate office and who is the
145 custodial parent of a child, or the primary caretaker of
146 a child, or the guardian of the property of a child when:

147 (i) Such child has a parent and child relationship with
148 an obligor who is not such custodial parent, primary
149 caretaker or guardian; and

150 (ii) The obligor with whom the child has a parent and
151 child relationship is not meeting an obligation to support
152 the child, or has not met such obligation in the past; or

153 (B) An individual who has applied for or is receiving
154 services from the child advocate office and who is an
155 adult or an emancipated minor whose spouse or former
156 spouse has been ordered by a court of competent
157 jurisdiction to pay spousal support to the individual,
158 whether such support is denominated alimony or
159 separate maintenance, or is identified by some other
160 terminology, thus establishing a support obligation with
161 respect to such spouse, when the obligor required to pay
162 such spousal support is not meeting the obligation, or
163 has not met such obligation in the past.

164 (14) "Master" or "family law master" means a person
165 appointed to such position under the provisions of
166 section one, article four of this chapter.

167 (15) "Obligee" means an individual to whom a duty of
168 support is owed, or the state of West Virginia or the
169 department of human services, if support has been
170 assigned to the state or department.

171 (16) "Obligor" means a person who owes a legal duty
172 to support another person.

173 (17) "Office of the children's advocate" means the
174 office created in section two, article three of this
175 chapter.

176 (18) "Primary caretaker of a child" means a parent or

177 other person having actual physical custody of a child
178 without a court order granting such custody, and who
179 has been primarily responsible for exercising parental
180 rights and responsibilities with regard to such child.

181 (19) "Source of income" means an employer or
182 successor employer of any other person who owes or will
183 owe income to an obligor.

184 (20) "Support" means the payment of money:

185 (A) For a child or spouse, ordered by a court of
186 competent jurisdiction, whether the payment is ordered
187 in an emergency, temporary, permanent or modified
188 order, decree or judgment of such court;

189 (B) To third parties on behalf of a child or spouse,
190 including, but not limited to, payments to medical,
191 dental, or educational providers, payments to insurers
192 for health and hospitalization insurance, payments of
193 residential rent or mortgage payments, payments on an
194 automobile, or payments for day care; and/or

195 (C) For a mother, ordered by a court of competent
196 jurisdiction, for the necessary expenses incurred by or
197 for the mother in connection with her confinement or of
198 other expenses in connection with the pregnancy of the
199 mother.

200 (21) "Support order" means any order of a court of
201 competent jurisdiction for the payment of support,
202 whether or not for a sum certain.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

- §48A-2-1. West Virginia child advocate office established.
- §48A-2-2. Legislative purpose and intent; responsibility of the child advocate office.
- §48A-2-3. Acceptance of federal purposes; compliance with federal requirements and standards.
- §48A-2-4. Director; appointment; qualifications; oath of office; director not to hold other office or engage in political activity.
- §48A-2-5. Functions and responsibilities of the office of child support enforcement continued in the child advocate office.
- §48A-2-6. Organization of the child advocate office.
- §48A-2-7. Powers and duties of the director.
- §48A-2-8. Guidelines for child support awards.
- §48A-2-9. Authority of the director to enter into cooperative agreements.
- §48A-2-10. Establishment of parent locator services.

- §48A-2-11. Cooperation with other states in the enforcement of domestic relations obligations.
- §48A-2-12. Disbursements of amounts collected as support.
- §48A-2-13. Payment of support to the child advocate office.
- §48A-2-14. Authorization for data processing and retrieval system.
- §48A-2-15. Obtaining support from federal tax refunds.
- §48A-2-16. Obtaining support from state income tax refunds.
- §48A-2-17. Obtaining support from unemployment compensation benefits.
- §48A-2-18. Obtaining support from workers' compensation.
- §48A-2-19. Providing information to credit reporting agencies.
- §48A-2-20. Publicizing child support enforcement services.
- §48A-2-21. Legislative rules governing waiver of fees.
- §48A-2-22. Family law masters plan.

§48A-2-1. West Virginia child advocate office established.

1 (a) There is hereby established within the department
2 of human services the child advocate office.

3 (b) The child advocate office shall be terminated
4 pursuant to the provisions of article ten, chapter four of
5 this code on the first day of July, one thousand nine
6 hundred ninety, unless sooner terminated or unless
7 continued or reestablished pursuant to such article and
8 chapter.

§48A-2-2. Legislative purpose and intent; responsibility of the child advocate office.

1 (a) This article is enacted for the purpose of creating
2 a child advocate office which will focus on the vital
3 issues of child support, spousal support, child custody,
4 visitation rights, and other related family law issues
5 involving the well-being of children, inasmuch as such
6 issues are properly within the jurisdiction of the state
7 of West Virginia. The Legislature of the state of West
8 Virginia, in creating the child advocate office, recog-
9 nizes the seriousness of family law issues as they affect
10 the health and welfare of the children of this state. The
11 Legislature intends, by the enactment of this article and
12 through the creation of this office, to specifically assign
13 the highest priority to these issues. It is the sense of the
14 Legislature that there must be a state office which, as
15 its primary function, protects and promotes the best
16 interests of children; which recognizes the rights and
17 obligations of all persons involved in family law issues;
18 and which has the authority and the means to resolve

19 family law issues fairly and efficiently. Through the
20 establishment of the child advocate office the Legisla-
21 ture intends to create an impetus and a mechanism for
22 dealing with the varied problems associated with
23 support enforcement, thereby enhancing the health and
24 welfare of our state's children and their families.

25 (b) In order to carry out the purposes and intent of
26 the Legislature, the child advocate office shall have, as
27 its primary responsibilities, the following:

28 (1) The offering of mediation and counseling to
29 parents so as to resolve family law issues which affect
30 the well-being of children;

31 (2) The enforcement of support obligations owed by a
32 parent to his or her child or children;

33 (3) The enforcement of support obligations owed by an
34 individual to his or her spouse or former spouse;

35 (4) Locating parents or spouses who owe a duty to pay
36 support;

37 (5) Establishing paternity on behalf of minors whose
38 paternal parentage has not been acknowledged by the
39 father or otherwise established by law;

40 (6) Obtaining court orders for child and spousal
41 support;

42 (7) Enforcing orders which establish the rights of
43 parents as to custody and visitation; and

44 (8) Assuring that the assistance and services of the
45 office required to be provided under the provisions of
46 this chapter will be available to all individuals for whom
47 such assistance is required or requested.

**§48A-2-3. Acceptance of federal purposes; compliance
with federal requirements and standards.**

1 (a) The state assents to the purposes of the federal
2 laws regarding child support and establishment of
3 paternity and agrees to accept federal appropriations
4 and other forms of assistance made under or pursuant
5 thereto, and authorizes the receipt of such appropria-
6 tions into the state treasury and the receipt of other

7 forms of assistance by the child advocate office for
8 expenditure, disbursement, and distribution by the
9 office in accordance with the provisions of this chapter
10 and the conditions imposed by applicable federal laws,
11 rules, and regulations.

12 (b) Insofar as such actions are consistent with the laws
13 of this state granting authority to the child advocate
14 office and the director, the office shall comply with such
15 requirements and standards as the secretary of the
16 federal department of health and human services may
17 have determined, as of the effective date of this section,
18 to be necessary for the establishment of an effective
19 program for locating obligors, establishing paternity,
20 obtaining support orders, and collecting support
payments.

**§48A-2-4. Director; appointment; qualifications; oath of
office; director not to hold other office or
engage in political activity.**

1 (a) There shall be a director of the child advocate
2 office who shall be appointed by the commissioner of the
3 department of human services. The salary of the
4 director shall be set by the commissioner and be paid
5 with funds of the office. The director shall be allowed
6 and paid necessary expenses incident to the
7 performance of his or her official duties.

8 (b) The director shall be selected with special refer-
9 ence and consideration given to his or her training,
10 experience, capacity and interest in or relating to the
11 child and spousal support enforcement programs
12 administered by the child advocate office.

13 (c) Before entering upon the duties of his or her office,
14 the director shall take and subscribe to the oath of office
15 prescribed by section five, article IV of the West
16 Virginia Constitution, and shall execute a corporate
17 surety bond in the sum of fifteen thousand dollars for
18 the faithful performance of his or her duties. The bond
19 shall be in the form prescribed by the attorney general
20 and approved by the governor, and both the certificate
21 of the oath and the bond shall be filed with the secretary
22 of state. Premiums upon the bond shall be paid out of

23 the funds of the child advocate office.

24 (d) The director shall not be a candidate for, or hold,
25 any other public office or public employment under the
26 federal government, or the government of this state or
27 any of its political subdivisions, or be a member or
28 officer of any political party committee, or serve as an
29 election official, or engage in any political activity, other
30 than to vote, in behalf of, or in opposition to, any
31 candidate, or political party in an election. Any violation
32 by the director of the provisions of this subsection shall
33 be cause for removal from office.

**§48A-2-5. Functions and responsibilities of the office of
child support enforcement continued in the
child advocate office.**

1 All functions and responsibilities of the office of child
2 support enforcement within the department of human
3 services are hereby continued and vested in the child
4 advocate office created under the provisions of this
5 article.

§48A-2-6. Organization of the child advocate office.

1 (a) Within limits of state appropriations and federal
2 grants and subject to provisions of state and federal
3 laws, rules and regulations, the director shall organize
4 the office into appropriate administrative units which
5 shall be operationally and functionally distinct and
6 separate from any other units or programs of the
7 department of human services so that employees of the
8 office shall not be required to perform functions or
9 duties of the department which are outside the scope of
10 activities of the child advocate office as defined in this
11 chapter. Consistent with the requirements of article six,
12 chapter twenty-nine of this code, the director shall
13 appoint and employ for the office such assistants and
14 employees, as may in his or her judgment be necessary
15 or desirable to carry out fully and in an orderly, efficient
16 and economical manner the powers, duties and respon-
17 sibilities of the office.

18 (b) Notwithstanding the provisions of sections three
19 and four, article six, chapter twenty-nine of this code

20 relating to the manner in which additions are made to
21 the list of positions in the classified service, and any
22 other provision of this code to the contrary, the positions
23 held by employees of the office shall be positions in the
24 classified service except for those positions named in
25 subdivisions (2),(3),(4),(9) and (12), subsection (a) of said
26 section four.

27 (c) Persons who are employees of the office of child
28 support enforcement in the department of human
29 services on the day preceding the effective date of this
30 section shall be given the option of continuing their
31 employment with the department of human services by
32 filling vacancies in existing positions elsewhere within
33 the department for which they qualify, or such persons
34 shall be assigned to positions in the child advocate office,
35 retaining their then current merit or civil service
36 ratings under the classified service.

§48A-2-7. Powers and duties of the director.

1 (a) The director may promulgate legislative rules in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code where such rules are required
4 to implement the provisions of this chapter.

5 (b) The director shall annually prepare a proposed
6 budget for the next fiscal year, and submit such budget
7 to the commissioner. Such budget shall include all sums
8 necessary to support the activities of the child advocate
9 office.

10 (c) In addition to any other duties required by this
11 chapter, the director shall:

12 (1) Develop and recommend guidelines for the con-
13 duct, operations, and procedures of the office and his or
14 her employees, including, but not limited to, the
15 following:

16 (A) Case load and staffing standards for employees
17 who perform investigation and recommendation func-
18 tions, enforcement functions, and clerical functions.

19 (B) Orientation programs for clients of the office.

20 (C) Public educational programs regarding domestic

21 relations law and community resources, including
22 financial and other counseling, and employment
23 opportunities.

24 (D) Model pamphlets and procedural forms, which
25 shall be distributed to each local office serving clients.

26 (2) Provide training programs for the childrens'
27 advocates and other employees of the office, to better
28 enable them to carry out the duties described in this
29 chapter.

30 (3) Gather and monitor relevant statistics.

31 (4) Develop and recommend guidelines to be used in
32 determining whether or not visitation has been wrong-
33 fully denied or custody has been abused.

34 (5) Develop standards and procedures for the transfer
35 of part or all of the responsibilities for a case from one
36 unit of the office to another in situations considered
37 appropriate.

§48A-2-8. Guidelines for child support awards.

1 (a) On or before the first day of October, one thousand
2 nine hundred eighty-seven, the director of the child
3 advocate office shall, by legislative rule, establish
4 guidelines for child support award amounts so as to
5 ensure greater uniformity by those persons who make
6 child support recommendations and enter child support
7 orders, and to increase predictability for parents,
8 children and other persons who are directly affected by
9 child support orders. Such guidelines shall be followed
10 by the children's advocate, the family law master and
11 the circuit court unless, in each instance, the advocate,
12 master or judge sets forth, in writing, reasons for not
13 following the guidelines in the particular case involved.
14 Notwithstanding the existence of such guidelines,
15 individual cases will still be considered on their own
16 merits.

17 (b) The Legislature, by the enactment of this article,
18 recognizes that children have a right to share in their
19 natural parents' level of living. Accordingly, guidelines
20 promulgated under the provisions of this section shall

21 not be based upon any schedule of minimum costs for
22 rearing children based upon subsistence level amounts
23 set forth by various agencies of government. The
24 Legislature recognizes that expenditures in families are
25 not made in accordance with subsistence level
26 standards, but are rather made in proportion to
27 household income, and as parental incomes increase or
28 decrease, the actual dollar expenditures for children
29 also increase or decrease correspondingly. In order to
30 ensure that children properly share in their parents'
31 resources, regardless of family structure, the guidelines
32 shall be structured so as to provide that after a
33 consideration of respective parental incomes, that child
34 support will be related, to the extent practicable, to the
35 level of living which such children would enjoy if they
36 were living in a household with both parents present.

37 (c) The guidelines promulgated under the provisions
38 of this section shall take into consideration the financial
39 contributions of both parents. The Legislature recog-
40 nizes that expenditures in households are made in
41 aggregate form and that total family income is pooled
42 to determine the level at which the family can live. The
43 guidelines shall provide for examining the financial
44 contributions of both parents in relationship to total
45 income, so as to establish and equitably apportion the
46 child support obligation. Under the guidelines, the child
47 support obligation of each parent will vary proportion-
48 ately according to their individual incomes.

49 (d) The guidelines shall be structured so as to take into
50 consideration any preexisting support orders which
51 impose additional duties of support upon an obligor
52 outside of the instant case, and shall provide direction
53 in cases involving split or shared custody.

54 (e) The guidelines shall have application to cases of
55 divorce, paternity, actions for support, and modifica-
56 tions thereof.

57 (f) In promulgating the legislative rule provided for
58 under the provisions of this section, the director shall be
59 directed by the following legislative findings:

60 (1) That amounts to be fixed as child support should

61 not include awards for alimony, notwithstanding the
62 fact that any amount fixed as child support will impact
63 upon the living conditions of custodial parents;

64 (2) That parental expenditures on children represent
65 a relatively constant percentage of family consumption
66 as family consumption increases, so that as family
67 income increases, the family's level of consumption
68 increases, and the children should share in and benefit
69 from this increase;

70 (3) That parental expenditures on children represent
71 a declining proportion of family income as the gross
72 income of the family increases, so that while total dollar
73 outlays for children have a positive relationship to the
74 family's gross income, the proportion of gross family
75 income allotted for the children has a negative relation-
76 ship to gross income;

77 (4) That expenditures on children vary according to
78 the number of children in the family, and as the number
79 of children in the family increase, the expenditures for
80 the children as a group increase, and the expenditures
81 on each individual child decrease; so that due to
82 increasing economies of scale and the increased sharing
83 of resources among family members, spending will not
84 increase in direct proportion to the number of children;

85 (5) That as children grow older, expenditures on
86 children increase, particularly during the teenage years.

**§48A-2-9. Authority of the director to enter into cooper-
ative agreements.**

1 (a) The director may, in his discretion, enter into
2 cooperative arrangements with state courts, federal
3 courts, and law-enforcement officials within this state.

4 (b) Such agreements shall:

5 (1) Assist the office in implementing the provisions of
6 this chapter, including entering into financial arrange-
7 ments with such courts or officials so as to assure
8 optimum results under the office's program of enforce-
9 ment of child and spousal support, and

10 (2) Provide for entering into such cooperative arran-

11 gements with respect to any other matters of common
12 concern to such courts or officials and the office.

§48A-2-10. Establishment of parent locator service.

1 (a) The office shall establish a parent locator service
2 to locate obligors, utilizing all sources of information
3 and available records and the parent locator service in
4 the federal department of health and human services.

5 (b) Upon entering into an agreement with the secre-
6 tary of the federal department of health and human
7 services for the use of that department's parent locator
8 service, the office shall accept and transmit to the
9 secretary requests for information to be furnished by
10 such federal parent locator service to authorized
11 persons. The office shall charge a reasonable fee
12 sufficient to cover the costs to the state and to the federal
13 department of health and human services incurred by
14 reason of such requests, and shall transfer to that
15 department from time to time so much of the fees
16 collected as are attributable to the costs incurred by that
17 department.

**§48A-2-11. Cooperation with other states in the enforce-
ment of domestic relations obligations.**

1 (a) The office will cooperate with any other state in
2 the following:

3 (1) In establishing paternity, if necessary;

4 (2) In locating an obligor residing temporarily or
5 permanently in this state, against whom any action is
6 being taken for the establishment of paternity or the
7 enforcement of child and spousal support;

8 (3) In securing compliance by an obligor residing
9 temporarily or permanently in this state, with an order
10 issued by a court of competent jurisdiction against such
11 obligor for the support and maintenance of a child or
12 children or the parent of such child or children; and

13 (4) In carrying out other functions necessary to a
14 program of child and spousal support enforcement.

15 (b) The director shall, by legislative rule, establish

16 procedures necessary to extend the office's system of
17 withholding under section three, article five of this
18 chapter so that such system will include withholding
19 from income derived within this state in cases where the
20 applicable support orders were issued in other states, in
21 order to assure that child support owed by obligors in
22 this state or any other state will be collected without
23 regard to the residence of the child for whom the
24 support is payable or the residence of such child's
25 custodial parent.

§48A-2-12. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by
2 the office shall be distributed within ten days of receipt,
3 except as otherwise specifically provided in this chapter.
4 Such amounts shall, except as otherwise provided under
5 the provisions of subsection (c) of this section, be
6 distributed as follows:

7 (1) The first fifty dollars of such amounts as are
8 collected periodically which represent monthly support
9 payments shall be paid to the obligee without affecting
10 the eligibility of such person's family for assistance from
11 the department of human services or decreasing any
12 amount otherwise payable as assistance to such family
13 during such month;

14 (2) Such amounts as are collected periodically which
15 are in excess of any amount paid to the family under
16 subdivision (1) of this subsection and which represent
17 monthly support payments shall be paid by the office to
18 the appropriate administrative unit of the department
19 of human services to reimburse it for assistance
20 payments to the family during such period (with
21 appropriate reimbursement of the federal government
22 to the extent of its participation in the financing);

23 (3) Such amounts as are in excess of amounts required
24 to reimburse the department of human services under
25 subdivision (2) of this subsection and are not in excess
26 of the amount required to be paid during such period
27 to the family by a court order shall be paid to the
28 obligee; and

29 (4) Such amounts as are in excess of amounts required
30 to be distributed under subdivisions (1), (2) and (3) of
31 this subsection shall be (A) paid by the office to the
32 appropriate administrative unit of the department of
33 human services (with appropriate reimbursement of the
34 federal government to the extent of its participation in
35 the financing) as reimbursement for any past assistance
36 payments made to the family for which the department
37 has not been reimbursed or (B) if no assistance
38 payments have been made by the department which
39 have not been repaid, such amounts shall be paid to the
40 obligee.

41 (b)(1) Whenever a family for whom support payments
42 have been collected and distributed under the provisions
43 of this chapter ceases to receive assistance from the
44 department of human services, the office shall:

45 (A) Continue to collect amounts of support payments
46 which represent monthly support payments from the
47 obligor for a period of not to exceed three months from
48 the month following the month in which such family
49 ceased to receive assistance from the department of
50 human services, and pay all amounts so collected, which
51 represent monthly support payments, to the obligee; and

52 (B) At the end of such three-month period, if the office
53 is authorized to do so by the obligee on whose behalf the
54 collection will be made, continue to collect amounts of
55 support payments which represent monthly support
56 payments from the obligor and pay any amount so
57 collected, which represents monthly support payments,
58 to the family (without requiring any formal reapplica-
59 tion and without the imposition of any application fee)
60 on the same basis as in the case of other obligees who
61 are not receiving assistance from the department of
62 human services.

63 (2) So much of any amounts of support so collected as
64 are in excess of the payments required to be made in
65 paragraph (A), subdivision (1) of this subsection shall be
66 distributed in the manner provided by paragraphs (A)
67 and (B), subdivision (4), subsection (a) of this section
68 with respect to excess amounts described in subsection

69 (a) of this section.

70 (c)(1) Notwithstanding the preceding provisions of this
71 section, amounts collected by the office as child support
72 for months in any period on behalf of a child for whom
73 the department of human services is making foster care
74 maintenance payments shall:

75 (A) Be paid by the office to the appropriate adminis-
76 trative unit of the department of human services to the
77 extent necessary to reimburse the department for foster
78 care maintenance payments made with respect to the
79 child during such period (with appropriate reimburse-
80 ment of the federal government to the extent of its
81 participation in financing);

82 (B) Be paid to the appropriate administrative unit of
83 the department of human services to the extent that the
84 amounts collected exceed the foster care maintenance
85 payments made with respect to the child during such
86 period but do not exceed the amounts required by a
87 court order to be paid as support on behalf of the child
88 during such period; and the department of human
89 services may use the payments in the manner it
90 determines will serve the best interests of the child,
91 including setting such payments aside for the child's
92 future needs or making all or a part thereof available
93 to the person responsible for meeting the child's day-to-
94 day needs; and

95 (C) Be paid to the appropriate administrative unit of
96 the department of human services if any portion of the
97 amounts collected remains after making the payments
98 required under paragraphs (A) and (B) of this subdivi-
99 sion, to the extent that such portion is necessary to
100 reimburse the department of human services, (with
101 appropriate reimbursement to the federal government
102 to the extent of its participation in the financing) for any
103 past foster care maintenance payments, or payments of
104 aid to families with dependent children which were
105 made with respect to the child, (and with respect to
106 which past collections have not previously been
107 retained);

108 (2) Any balance of the amounts required to be paid

109 under the provisions of subdivision (1) shall be paid to
110 the appropriate administrative unit of the department
111 of human services, for use by the department in
112 accordance with paragraph (B) of this subdivision.

113 (d) Any payment required to be made under the
114 provisions of this section to a family shall be made to
115 the resident parent, legal guardian or caretaker relative
116 having custody of or responsibility for the child or
117 children.

118 (e) The director shall establish bonding requirements
119 for employees of the office who receive, disburse, handle,
120 or have access to cash.

121 (f) The director shall maintain methods of administra-
122 tion which are designed to assure that employees of the
123 office responsible for handling cash receipts shall not
124 participate in accounting or operating functions which
125 would permit them to conceal in the accounting records
126 the misuse of cash receipts: *Provided*, That the director
127 may provide for exceptions to this requirement in the
128 case of sparsely populated areas in this state where the
129 hiring of unreasonable additional staff in the local office
130 would otherwise be necessary.

**§48A-2-13. Payment of support to the child advocate
office.**

1 All support payments owed to an obligee who is an
2 applicant for or recipient of the services of the office
3 shall be paid to the office. Any other obligee owed a duty
4 of support under the terms of a support order entered
5 by a court of competent jurisdiction may request that
6 the support payments be made to the office. In such
7 case, the office shall proceed to receive and disburse
8 such support payments to or on behalf of the obligee as
9 provided by law.

**§48A-2-14. Authorization for data processing and retrie-
val system.**

1 In accordance with an initial and annually updated
2 advance data processing planning document approved
3 by the secretary of the federal department of health and
4 human services, the office may establish an automatic

5 data processing and retrieval system designed effec-
6 tively and efficiently to assist the director and his or her
7 employees in carrying out the provisions of this chapter.

§48A-2-15. Obtaining support from federal tax refunds.

1 (a) The director shall, by legislative rule, place in
2 effect procedures necessary for the office to obtain
3 payment of past due support from federal tax refunds
4 from overpayments made to the secretary of the
5 treasury of the United States, and shall take all steps
6 necessary to implement and utilize such procedures.

7 (1) Such legislative rule shall, at a minimum,
8 prescribe:

9 (A) The time or times at which the office must serve
10 on the obligor or submit to the secretary of the treasury
11 notices of past due support;

12 (B) The manner in which such notices must be served
13 on the obligor or submitted to the secretary of the
14 treasury;

15 (C) The necessary information which must be con-
16 tained in or accompany the notices;

17 (D) The amount of the fee, if any, to be paid to the
18 secretary of the treasury for the full cost of applying the
19 procedure whereby past due support is obtained from
20 federal tax refunds;

21 (E) The amount of the fee, not to exceed twenty-five
22 dollars, which the office may collect from the obligee in
23 a case where such obligee is an applicant for the services
24 of the office, but is not a recipient of assistance from the
25 department of human services in the form of aid to
26 families with dependent children. The office shall
27 inform such obligee in advance of the amount of the fee
28 to be charged.

29 (2) When the obligor owes past due support which has
30 been assigned to the department of human services as
31 a condition of eligibility for aid from the department,
32 such legislative rule shall prescribe:

33 (A) The minimum amount of past due support which

34 must have accrued before the office may act to obtain
35 payment of past due support from such federal tax
36 refunds; and

37 (B) The time period for which such accrued support
38 payments must have been due before the office may act
39 to obtain payment of past due support from such federal
40 tax refunds.

41 (3) When an obligor owes past due support that has
42 not been assigned to the department of human services
43 but which the office has agreed to collect for the obligee,
44 then in such case, withholding from federal tax refunds
45 will not be pursued unless the office has examined the
46 obligor's pattern of payment of support and the obligee's
47 likelihood of successfully pursuing other enforcement
48 actions, and has determined that the amount of past due
49 support which will be owed, at the time the withholding
50 is to be made, will be five hundred dollars or more. In
51 determining whether the amount of past due support
52 will be five hundred dollars or more, the office will
53 consider the amount of all unpaid past due support,
54 including that which may have accrued prior to the time
55 that the office first agreed to enforce the support order.

56 (b) Except as provided in subsection (c) of this section,
57 "past due support" means, for the purposes of this
58 section, the amount of unpaid past due support owed
59 under the terms of a support order to or on behalf of
60 a minor child, or to or on behalf of a minor child and
61 the parent with whom the child is living, regardless of
62 whether the amount has been reduced to judgment or
63 not.

64 (c) For the purposes of subdivision (3), subsection (a)
65 of this section, "past due support" shall not include past
66 due support owed to or on behalf of the parent with
67 whom the child is living.

68 (d) The legislative rule promulgated by the director
69 pursuant to this section shall, at a minimum, provide
70 that prior to notifying the secretary of treasury of past
71 due support, a notice to the obligor as prescribed under
72 subsection (a) of this section shall:

73 (1) Notify the obligor that a withholding will be made
74 from any refund otherwise payable to such obligor;

75 (2) Instruct the obligor of the steps which may be
76 taken to contest (A) the determination of the office that
77 past due support is owed, or (B) the amount of the past
78 due support; and

79 (3) Provide information with respect to the procedures
80 to be followed, in the case of a joint return, to protect
81 the share of the refund which may be payable to another
82 person.

83 (e) If the office is notified by the secretary of the
84 treasury that the refund from which withholding is
85 proposed to be made is based upon a joint return, and
86 if the past due support which is involved has not been
87 assigned to the department of human services, then the
88 office may delay distribution of the amount withheld
89 until such time as the secretary of the treasury notifies
90 the office that the other person filing the joint return
91 has received his or her proper share of the refund, but
92 such delay shall not exceed six months.

93 (f) In any case in which an amount is withheld by
94 the secretary of the treasury under the provisions of this
95 section and paid to the office, if the office subsequently
96 determines that the amount certified as past due was in
97 excess of the amount actually owed at the time the
98 amount withheld is to be distributed to or on behalf of
99 the child, the office shall pay the excess amount
100 withheld to the obligor thought to have owed the past
101 due support, or, in the case of amounts withheld on the
102 basis of a joint return, jointly to the parties filing such
103 return.

**§48A-2-16. Obtaining support from state income tax
refunds.**

1 (a) The tax commissioner shall place in effect proce-
2 dures necessary for the office to obtain payment of past
3 due support from state income tax refunds from
4 overpayments made to the tax commissioner pursuant
5 to the provisions of article twenty-one, chapter eleven of
6 this code.

7 (b) The director shall, by legislative rule, place in
8 effect procedures necessary for the office to enforce a
9 support order through a notice to the tax commissioner
10 which will cause any refund of state income tax which
11 would otherwise be payable to an obligor to be reduced
12 by the amount of overdue support owed by such
13 obligor.

14 (1) Such legislative rule shall, at a minimum,
15 prescribe:

16 (A) The time or times at which the office must serve
17 on the obligor or submit to the tax commissioner notices
18 of past due support;

19 (B) The manner in which such notices must be served
20 on the obligor or submitted to the tax commissioner;

21 (C) The necessary information which must be con-
22 tained in or accompany the notices;

23 (D) The amount of the fee, if any, to be paid to the
24 tax commissioner for the full cost of applying the
25 procedure whereby past due support is obtained from
26 state income tax refunds; and

27 (E) The amount of the fee, not to exceed twenty-five
28 dollars, which the office may deduct from the obligor's
29 state income tax refund in a case where the obligee is
30 an applicant for the services of the office, but is not a
31 recipient of assistance from the department of human
32 services in the form of aid to families with dependent
33 children.

34 (2) Withholding from state income tax refunds will not
35 be pursued unless the office has examined the obligor's
36 pattern of payment of support and the obligee's likeli-
37 hood of successfully pursuing other enforcement actions,
38 and has determined that the amount of past due support
39 which will be owed, at the time the withholding is to
40 be made, will be one hundred dollars or more. In
41 determining whether the amount of past due support
42 will be one hundred dollars or more, the office will
43 consider the amount of all unpaid past due support,
44 including that which may have accrued prior to the time
45 that the office first agreed to enforce the support order.

46 (c) The director of the child advocate office shall enter
47 into agreements with the secretary of the treasury and
48 the tax commissioner, as well as other appropriate
49 governmental agencies, to secure information relating to
50 the social security number or numbers and the address
51 or addresses of any obligor, so as to provide notice
52 between such agencies to aid the office in requesting
53 state income tax deductions, and to aid the tax
54 commissioner in enforcing such deductions. In each such
55 case, the tax commissioner, in processing the state
56 income tax deduction, will notify the office of the
57 obligor's home address and social security number or
58 numbers. The office will provide this information to any
59 other state involved in processing the support order.

60 (d) For the purposes of this section, "past due support"
61 means the amount of unpaid past due support owed
62 under the terms of a support order to or on behalf of
63 a child, or to or on behalf of a minor child and the parent
64 with whom the child is living, regardless of whether the
65 amount has been reduced to judgment or not.

66 (e) The office may, under the provisions of this section,
67 enforce the collection of past due support on behalf of
68 a child who has reached the age of majority.

69 (f) The legislative rule promulgated by the director
70 pursuant to the provisions of this section shall, at a
71 minimum, provide that prior to notifying the tax
72 commissioner of past due support, a notice to the obligor
73 as prescribed under subsection (a) of this section shall:

74 (1) Notify the obligor that a withholding will be made
75 from any refund otherwise payable to such obligor;

76 (2) Instruct the obligor of the steps which may be
77 taken to contest the determination of the office that past
78 due support is owed or the amount of the past due
79 support; and

80 (3) Provide information with respect to the procedures
81 to be followed, in the case of a joint return, to protect
82 the share of the refund which may be payable to another
83 person.

84 (g) If the office is notified by the tax commissioner

85 that the refund from which withholding is proposed to
86 be made is based upon a joint return, and if the past
87 due support which is involved has not been assigned to
88 the department of human services, then the office may
89 delay distribution of the amount withheld until such
90 time as the tax commissioner notifies the office that the
91 other person filing the joint return has received his or
92 her proper share of the refund, but such delay shall not
93 exceed six months.

94 (h) In any case in which an amount is withheld by the
95 tax commissioner under the provisions of this section
96 and paid to the office, if the office subsequently
97 determines that the amount certified as past due was in
98 excess of the amount actually owed at the time the
99 amount withheld is to be distributed, the office shall pay
100 the excess amount withheld to the obligor thought to
101 have owed the past due support, or, in the case of
102 amounts withheld on the basis of a joint return, jointly
103 to the parties filing such return.

104 (i) The director shall, by legislative rule, structure the
105 time and method by which all amounts received by the
106 office, as payments of past due support from state
107 income tax refunds, are distributed. In a case where an
108 obligee is an applicant for the services of the office, but
109 is not a current recipient of assistance from the
110 department of human services in the form of aid to
111 families with dependent children, such method of
112 distribution shall give priority to the obligee and the
113 family of the obligee by paying such amounts to the
114 obligee first rather than using them first to reimburse
115 the department of human services.

§48A-2-17. Obtaining support from unemployment compensation benefits.

1 (a) The director shall determine on a periodic basis
2 whether individuals receiving unemployment compensation
3 owe child support obligations which are being
4 enforced or have been requested to be enforced by the
5 office. If an individual is receiving such compensation
6 and owes any such child support obligation which is not
7 being met, the office shall enter into an agreement with

8 such individual to have specified amounts withheld
9 otherwise payable to such individual, and shall submit
10 a copy of such agreement to the department of employ-
11 ment security. In the absence of such agreement, the
12 office shall bring legal process to require the withhold-
13 ing of amounts from such compensation.

14 (b) The director shall enter into a written agreement
15 with the department of employment security for the
16 purpose of withholding unemployment compensation
17 from individuals with unmet support obligations being
18 enforced by the office. The office shall agree only to a
19 withholding program that it expects to be cost effective,
20 and, as to reimbursement, shall agree only to reimburse
21 the department of employment security for its actual,
22 incremental costs of providing services to the office.

23 (c) The director shall establish and use written
24 criteria for selecting cases to pursue through the
25 withholding of unemployment compensation for support
26 purposes. These criteria shall be designed to ensure
27 maximum case selection and minimal discretion in the
28 selection process.

29 (d) The director shall, not less than annually, provide
30 a receipt to an individual who requests a receipt for the
31 support paid through the withholding of unemployment
32 compensation, if receipts are not provided through other
33 means.

34 (e) The director shall, through direct contact with the
35 department of employment security, process cases
36 through the department of employment security in this
37 state, and shall process cases through support enforce-
38 ment agencies in other states. The director shall receive
39 all amounts withheld by the department of employment
40 security in this state, forwarding any amounts withheld
41 on behalf of support enforcement agencies in other
42 states to those agencies.

43 (f) The director shall, not less than annually, review
44 and document program operations, including case
45 selection criteria established under subsection (c) of this
46 section, and the costs of the withholding process versus
47 the amounts collected and, as necessary, modify proce-

48 dures and renegotiate the services provided by the
49 department of employment security to improve program
50 and cost effectiveness.

51 (g) For the purposes of this section:

52 (1) "Legal process" means a writ, order, summons or
53 other similar process in the nature of garnishment
54 which is issued by a court of competent jurisdiction or
55 by an authorized official pursuant to an order of such
56 court or pursuant to state or local law.

57 (2) "Unemployment compensation" means any com-
58 pensation under state unemployment compensation law
59 (including amounts payable in accordance with agree-
60 ments under any federal unemployment compensation
61 law). It includes extended benefits, unemployment
62 compensation for federal employees, unemployment
63 compensation for ex-servicemen, trade readjustment
64 allowances, disaster unemployment assistance, and
65 payments under the Federal Redwood National Park
66 Expansion Act.

§48A-2-18. Obtaining support from workers' compensation.

1 (a) The director shall determine on a periodic basis
2 whether individuals receiving workers' compensation
3 benefits owe child support obligations which are being
4 enforced or have been requested to be enforced by the
5 office. If an individual is receiving such compensation
6 and owes any such child support obligation which is not
7 being met, the office shall enter into an agreement with
8 such individual to have specified amounts withheld
9 otherwise payable to such individual, and shall submit
10 a copy of such agreement to the workers' compensation
11 commissioner. In the absence of such agreement, the
12 office shall bring legal process to require the withhold-
13 ing of amounts from such compensation.

14 (b) The director shall enter into a written agreement
15 with the workers' compensation commissioner for the
16 purpose of withholding workers' compensation benefits
17 from individuals with unmet support obligations being
18 enforced by the office. The office shall agree only to a

19 withholding program that it expects to be cost effective,
20 and, as to reimbursement, shall agree only to reimburse
21 the workers' compensation commissioner for the
22 commissioner's actual, incremental costs of providing
23 services to the support enforcement agency.

24 (c) The director shall establish and use written
25 criteria for selecting cases to pursue through the
26 withholding of workers' compensation benefits for
27 support purposes. These criteria shall be designed to
28 ensure maximum case selection and minimal discretion
29 in the selection process.

30 (d) The director shall, not less than annually, provide
31 a receipt to an individual who requests a receipt for the
32 support paid through the withholding of workers'
33 compensation benefits, if receipts are not provided
34 through other means.

35 (e) The director shall, through direct contact with the
36 workers' compensation commissioner, process cases
37 through the workers' compensation commissioner in this
38 state, and shall process cases through support enforce-
39 ment agencies in other states. The director shall receive
40 all amounts withheld by the workers' compensation
41 commissioner in this state, forwarding any amounts
42 withheld on behalf of support enforcement agencies in
43 other states to those agencies.

44 (f) The director shall, not less than annually, review
45 and document program operations, including case
46 selection criteria established under subsection (c) of this
47 section, and the costs of the withholding process versus
48 the amounts collected and, as necessary, modify proce-
49 dures and renegotiate the services provided by the
50 workers' compensation commissioner to improve
51 program and cost effectiveness.

52 (g) For the purposes of this section:

53 (1) "Legal process" means a writ, order, summons or
54 other similar process in the nature of garnishment
55 which is issued by a court of competent jurisdiction or
56 by an authorized official pursuant to an order of such
57 court or pursuant to state or local law.

58 (2) "Workers' compensation benefits" means any
59 compensation payable under state workers' compensa-
60 tion law as temporary total disability benefits.

§48A-2-19. Providing information to credit reporting agencies.

1 The director, shall by legislative rule, establish
2 procedures whereby information regarding the amount
3 of overdue support owed by an obligor residing in this
4 state will be made available to any consumer reporting
5 agency upon the request of the agency: *Provided*, That
6 such legislative rule shall provide for the following:

7 (1) If the amount of overdue support is less than one
8 thousand dollars, such information shall not be
9 available;

10 (2) If the amount of overdue support is one thousand
11 dollars or more, any such information with respect to
12 an obligor shall be made available under such proce-
13 dures only after notice has been sent to such obligor of
14 the proposed action, and such obligor has been given a
15 reasonable opportunity to contest the accuracy of such
16 information; and

17 (3) The imposition of a fee for furnishing such
18 information, not to exceed the actual cost thereof.

§48A-2-20. Publicizing child support enforcement services.

1 The child advocate office shall regularly and fre-
2 quently publicize, through public service announce-
3 ments, the availability of child support enforcement
4 services under the provisions of this chapter and
5 otherwise, including information as to any application
6 fees for such services and a toll-free telephone number
7 and a postal address at which further information may
8 be obtained.

§48A-2-21. Legislative rules governing waiver of fees.

1 The director shall, by legislative rule, describe the
2 circumstances under which fees charged by the office
3 may be waived, and such rule shall provide for the
4 waiver of any fee, in whole or in part, when such fee

5 would otherwise be required to be paid under the
6 provisions of this chapter.

§48A-2-22. Family law masters fund.

1 The office and the clerks of the circuit courts shall,
2 on or before the last day of each month, transmit all fees
3 and costs received for the services of the office or the
4 family law master under this chapter to the state
5 treasurer for deposit in the state treasury to the credit
6 of a special revenue fund to be known as the "family law
7 masters fund", which is hereby created. All moneys
8 collected and received under this chapter and paid into
9 the state treasury and credited to the "family law
10 masters fund" shall be used solely for paying the costs
11 associated with the duties imposed upon the family law
12 masters under the provisions of this chapter which
13 require activities by the masters which are not subject
14 to being matched with federal funds or subject to
15 reimbursement by the federal government, and
16 requisitions shall be drawn upon the fund only for such
17 purposes. Such moneys shall not be treated by the
18 auditor and treasurer as part of the general revenue of
19 the state.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-1. Purposes; how article to be construed.

§48A-3-2. Placement of children's advocates throughout the state; supervision; office procedures.

§48A-3-3. Duties of children's advocate.

§48A-3-4. Statements of account.

§48A-3-5. Enforcement of custody and visitation orders.

§48A-3-6. Investigations of support and visitation orders; notice and hearing upon modifications; petition for change.

§48A-3-7. Vacancies; interim children's advocate.

§48A-3-8. Compensation; expenses.

§48A-3-1. Purposes; how article to be construed.

1 (a) The purposes of this article are:

2 (1) To enumerate and describe the functions and
3 duties of the children's advocate as an employee of the
4 child advocate office;

5 (2) To ensure that procedures followed by the child-
6 ren's advocate will protect the best interests of children

7 in domestic relations matters;

8 (3) To encourage and assist parties voluntarily to
9 resolve contested domestic relations matters by
10 agreement;

11 (4) To compel the enforcement of visitation and
12 custody orders; and

13 (5) To compel the enforcement of support orders,
14 thereby ensuring that persons legally responsible for the
15 care and support of children assume their legal obliga-
16 tions and reduce the financial cost to this state of
17 providing public assistance funds for the care of
18 children.

19 (b) This article shall be construed to facilitate the
20 resolution of domestic relations matters.

**§48A-3-2. Placement of children's advocates throughout
the state; supervision; office procedures.**

1 (a) The child advocate office shall employ twenty
2 employees in the position of children's advocate, and the
3 offices of the children's advocates shall be distributed
4 geographically so as to provide an office for each of the
5 following areas of the state:

6 (1) The counties of Brooke, Hancock and Ohio;

7 (2) The counties of Marshall, Tyler and Wetzel;

8 (3) The counties of Pleasants, Ritchie, Wirt and Wood;

9 (4) The counties of Calhoun, Jackson and Roane;

10 (5) The counties of Mason and Putnam;

11 (6) The counties of Cabell and Wayne;

12 (7) The counties of McDowell and Wyoming;

13 (8) The counties of Logan and Mingo;

14 (9) The counties of Kanawha, Lincoln and Boone

15 (10) The county of Raleigh;

16 (11) The counties of Mercer, Monroe and Summers;

17 (12) The counties of Fayette and Nicholas;

18 (13) The counties of Greenbrier and Pocahontas;

19 (14) The counties of Braxton, Clay, Gilmer and
20 Webster;

21 (15) The counties of Doddridge, Harrison, Lewis and
22 Upshur;

23 (16) The counties of Marion and Taylor;

24 (17) The counties of Monongalia and Preston;

25 (18) The counties of Barbour, Randolph and Tucker;

26 (19) The counties of Grant, Hampshire, Hardy,
27 Mineral and Pendleton; and

28 (20) The counties of Berkeley, Jefferson and Morgan.

29 (b) Each children's advocate shall be appointed by the
30 director of the child advocate office. The children's
31 advocates shall be duly qualified attorneys licensed to
32 practice in the courts of this state.

33 (c) The children's advocate is an employee of the child
34 advocate office.

§48A-3-3. Duties of the children's advocate.

1 (a) Before adjudication of a domestic relations matter,
2 the children's advocate shall have the following duties:

3 (1) To provide an informational pamphlet, designed in
4 consultation with the director, to each party to a
5 domestic relations matter. The informational pamphlet
6 shall explain the procedures of the court and the
7 children's advocate; the duties of the children's advocate;
8 the rights and responsibilities of the parties; and the
9 availability of human services in the community. The
10 informational pamphlet shall be provided as soon as
11 possible after the filing of a complaint or other initiating
12 pleading. Upon request, a party shall receive an oral
13 explanation of the informational pamphlet from the
14 office of the children's advocate.

15 (2) To investigate all relevant facts, and to make a
16 written report and recommendation to the parties and
17 to the court regarding child custody or visitation, or
18 both, if there is a dispute as to child custody or

19 visitation, or both, or if ordered to do so by the court.
20 The investigation may include reports and evaluations
21 by outside persons or agencies if requested by the
22 parties or the court, and shall include documentation of
23 alleged facts, if practicable.

24 (3) To investigate all relevant facts and to make a
25 written report and recommendation to the parties and
26 to the court regarding child or spousal support. The
27 investigation may include reports and evaluations by
28 outside persons or agencies if requested by the parties
29 or the court, and shall include documentation of alleged
30 facts, if practicable. The child support formula promul-
31 gated pursuant to the provisions of section eight, article
32 two of this chapter shall be used as a guideline in
33 recommending child support: *Provided*, That whenever
34 the recommended child support falls outside the
35 guidelines, the children's advocate shall file written
36 reviewable reasons setting forth findings of fact
37 sufficient to justify the recommendation.

38 (b) The children's advocate shall act to establish the
39 paternity of every child born out of wedlock for whom
40 paternity has not been established, when such child's
41 primary caretaker is an applicant for or recipient of aid
42 to families with dependent children, and when such
43 primary caretaker has assigned to the department of
44 human services any rights to support for the child which
45 might be forthcoming from the putative father: *Pro-*
46 *vided*, That if the children's advocate is informed by the
47 commissioner of the department of human services or
48 his or her authorized employee that it has been
49 determined that it is against the best interest of the
50 child to establish paternity, the children's advocate shall
51 decline to so act. The children's advocate, upon the
52 request of any primary caretaker of a child born out of
53 wedlock, regardless of whether such primary caretaker
54 is an applicant or recipient of aid to families with
55 dependent children, shall undertake to establish the
56 paternity of such child.

57 (c) The children's advocate shall undertake to secure
58 support for any individual who is receiving aid to
59 families with dependent children when such individual

60 has assigned to the department of human services any
61 rights to support from any other person such individual
62 may have: *Provided*, That if the children's advocate is
63 informed by the commissioner of the department of
64 human services or his or her authorized employee that
65 it has been determined that it is against the best
66 interests of a child to secure support on the child's
67 behalf, the children's advocate shall decline to so act.
68 The children's advocate, upon the request of any
69 individual, regardless of whether such individual is an
70 applicant or recipient of aid to families with dependent
71 children, shall undertake to secure support for the
72 individual. If circumstances require, the children's
73 advocate shall utilize the provisions of article seven of
74 this chapter and any other reciprocal arrangements
75 which may be adopted with other states for the
76 establishment and enforcement of support obligations,
77 and if such arrangements and other means have proven
78 ineffective, the children's advocate may utilize the
79 federal courts to obtain and enforce court orders for
80 support.

81 (d) The children's advocate shall pursue the enforce-
82 ment of support orders through the withholding from
83 income of amounts payable as support:

84 (1) Without the necessity of an application from the
85 obligee in the case of a support obligation owed to an
86 obligee to whom services are already being provided
87 under the provisions of this chapter; and

88 (2) On the basis of an application for services in the
89 case of any other support obligation arising from a
90 support order entered by a court of competent
91 jurisdiction.

92 (e) The children's advocate may decline to commence
93 an action to obtain an order of support under the
94 provisions of section one, article five of this chapter if
95 an action for divorce, annulment, or separate mainte-
96 nance is pending, or the filing of such action is
97 imminent, and such action will determine the issue of
98 support for the child: *Provided*, That such action shall
99 be deemed to be imminent if it is proposed by the

100 obligee to be commenced within the twenty-eight days
101 next following a decision by the children's advocate that
102 an action should properly be brought to obtain an order
103 for support.

104 (f) If the child advocate office, through the children's
105 advocate, shall undertake paternity determination
106 services, child support collection, or support collection
107 services for a spouse or former spouse upon the written
108 request of an individual who is not an applicant or
109 recipient of assistance from the department of human
110 services, the office may impose an application fee for
111 furnishing such services. Such application fee shall be
112 in a reasonable amount, not to exceed twenty-five
113 dollars, as determined by the director: *Provided*, That
114 the director may fix such amount at a higher or lower
115 rate which is uniform for this state and all other states
116 if the secretary of the federal department of health and
117 human services determines that a uniform rate is
118 appropriate for any fiscal year to reflect increases or
119 decreases in administrative costs. Any cost in excess of
120 the application fee so imposed may be collected from the
121 obligor who owes the child or spousal support obligation
122 involved.

§48A-3-4. Statements of account.

1 The child advocate office shall provide annually to
2 each obligor and obligee, without charge, one statement
3 of account upon request. Additional statements of
4 account shall be provided at a fee not to exceed two
5 dollars. Statements provided under this subsection are
6 in addition to statements provided for judicial hearings.

§48A-3-5. Enforcement of custody and visitation orders.

1 With regard to a custody or visitation order, the office
2 shall, upon receipt of a written statement setting forth
3 the specific facts alleged to constitute a violation,
4 attempt to mediate the issues involved and reach a
5 settlement between the parties. If such mediation efforts
6 are unsuccessful, the children's advocate shall initiate
7 enforcement proceedings, if the children's advocate
8 determines that there is reason to believe a violation of
9 a custody or visitation order has occurred. Upon request,

10 the office of the children's advocate shall assist a person
11 in preparing a written statement alleging a violation of
12 a custody or visitation order.

**§48A-3-6. Investigations of support and visitation orders;
notice and hearing upon modifications;
petition for change.**

1 (a) In every case in which a final judgment containing
2 a child support order has been entered in a domestic
3 relations matter, the children's advocate shall from time
4 to time examine the records and conduct any investiga-
5 tion considered necessary to determine whether the
6 child support amount should be increased or decreased
7 in view of a temporary or permanent change in physical
8 custody of the child which the court has not ordered,
9 increased need of the child or changed financial
10 conditions, as follows:

11 (1) If a child is being supported in whole or in part
12 by assistance payments from the department of human
13 services, at the initiative of the children's advocate, if
14 there are reasonable grounds to believe that the amount
15 of child support should be modified, but not less than
16 once each two years.

17 (2) Upon receipt of a written request from an obligee
18 or an obligor. The children's advocate may not be
19 required to investigate more than one request received
20 from a party each two years. Within sixty days after
21 receipt of a request under this subdivision, the office of
22 the children's advocate shall complete its investigation
23 and make any resulting recommendations and support-
24 ing documents available as required in section three of
25 this article.

26 (b) After a final judgment containing a visitation
27 order has been entered in a domestic relations matter,
28 if there is a dispute as to visitation which is not resolved
29 voluntarily by the parties through a meeting with the
30 office of the children's advocate, the children's advocate
31 may petition the court for enforcement or modification
32 of the visitation order. A written report and recommen-
33 dation shall accompany the petition.

34 (c) Before a hearing on a proposed modification, the
35 office shall notify both parties of the proposed modifi-
36 cation and afford the parties an opportunity for review
37 and comment.

38 (d) The office shall petition the court for modification
39 of the amount of a child support order if modification
40 is determined to be necessary under subsection (a). A
41 written report and recommendation shall accompany
42 the petition.

43 (e) As used in this section, "changed financial
44 conditions" means increases or decreases in the resour-
45 ces available to either party from any source. Changed
46 financial conditions includes, but is not limited to, the
47 application for or receipt of any form of public assist-
48 ance payments, unemployment compensation and
49 workers' compensation.

§48A-3-7. Vacancies; interim children's advocate.

1 (a) If the position of children's advocate becomes
2 vacant for any reason, the director shall appoint a
3 person to the position of children's advocate not later
4 than six months after the vacancy occurs.

5 (b) If necessary, the director may appoint an interim
6 children's advocate to serve for not longer than six
7 months until a children's advocate is appointed pursuant
8 to this section.

§48A-3-8. Compensation; expenses.

1 The compensation and expenses of the children's
2 advocate and of the employees of the office and all
3 operating expenses incurred by the office shall be fixed
4 by the director and paid by the child advocate office.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Designation of master; notice of master's hearing; content of notice; determination of issues by consent; hearing.

§48A-4-2. Hearing procedures.

§48A-4-3. Default orders; temporary orders.

§48A-4-4. Master's final orders.

§48A-4-5. Circuit court review of master's action or master's final order.

§48A-4-6. Procedure for review by circuit court.

§48A-4-7. Form of petition for review.

§48A-4-8. Brief in opposition to a petition for review.

§48A-4-9. Circuit court review of master's final order.

§48A-4-1. Designation of master; notice of master's hearing; content of notice; determination of issues by consent; hearing.

1 (a) The governor shall appoint family law masters in
2 such numbers and to serve such areas of the state as
3 provided for under the provisions of this article. The
4 appointment of an individual as a master shall be for
5 a term of four years. Upon the expiration of his or her
6 term, a family law master may continue to perform the
7 duties of the office until his or her successor is
8 appointed, or for sixty days after the date of the
9 expiration of the master's term, whichever is earlier.

10 (b) No individual may be appointed to serve as a
11 family law master unless he or she has been for at least
12 five years a member in good standing of the West
13 Virginia state bar association.

14 (c) Removal of a master during the term for which he
15 or she is appointed shall be only for incompetency,
16 misconduct, neglect of duty, or physical or mental
17 disability.

18 (d) A family law master may not engage in the
19 practice of law, and may not engage in any other
20 business, occupation, or employment inconsistent with
21 the expeditious, proper, and impartial performance of
22 his or her duties as a judicial officer.

23 (e) All family law masters, and all necessary clerical
24 and secreterial assistants employed in the offices of
25 family law masters shall be deemed to be officers and
26 employees in the judicial branch of state government.
27 The director of the child advocate office and the
28 commissioner of the department of human services shall
29 enter into an agreement with the administrative office
30 of the supreme court of appeals whereby the office and
31 the department shall contract to pay the administrative
32 office of the supreme court of appeals for the services
33 of the family law masters required to be furnished
34 under the provisions of this chapter which are not
35 otherwise payable from the family law masters fund

36 created under the provisions of section twenty-two,
37 article two of this chapter.

38 (f) A family law master appointed under the provi-
39 sions of this article shall receive as full compensation for
40 his or her services an annual salary of thirty-five
41 thousand dollars. The secretary-clerk of the family law
42 master shall receive an annual salary of fifteen thousand
43 dollars. Disbursement of salaries shall be made by or
44 pursuant to the order of the director of the
45 administrative office of the supreme court of appeals.

46 (g) Family law masters serving under the provisions
47 of this article shall be allowed their actual and necessary
48 expenses incurred in the performance of their duties.
49 Such expenses and compensation shall be determined
50 and paid by the director of the administrative office of
51 the supreme court of appeals under such regulations as
52 he or she may prescribe with the approval of the
53 supreme court of appeals.

54 (h) The offices of the family law masters shall be
55 distributed geographically so as to provide an office of
56 the family law master for each of the following areas:

- 57 (1) The counties of Brooke, Hancock and Ohio;
- 58 (2) The counties of Marshall, Tyler and Wetzel;
- 59 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
- 60 (4) The counties of Calhoun, Jackson and Roane;
- 61 (5) The counties of Mason and Putnam;
- 62 (6) The counties of Cabell and Wayne;
- 63 (7) The counties of McDowell and Wyoming;
- 64 (8) The counties of Logan and Mingo;
- 65 (9) The counties of Kanawha, Lincoln and Boone;
- 66 (10) The county of Raleigh;
- 67 (11) The counties of Mercer, Monroe and Summers;
- 68 (12) The counties of Fayette and Nicholas;
- 69 (13) The counties of Greenbrier and Pocahontas;

70 (14) The counties of Braxton, Clay, Gilmer and
71 Webster;

72 (15) The counties of Doddridge, Harrison, Lewis and
73 Upshur;

74 (16) The counties of Marion and Taylor;

75 (17) The counties of Monongalia and Preston;

76 (18) The counties of Barbour, Randolph and Tucker;

77 (19) The counties of Grant, Hampshire, Hardy,
78 Mineral and Pendleton; and

79 (20) The counties of Berkeley, Jefferson and Morgan.

80 The governor shall appoint two masters to the office
81 of the family law master for the area of Kanawha,
82 Lincoln and Boone counties. In each of the other areas
83 defined by this subsection, the governor shall appoint
84 one person as family law master for such area.

85 (i) The circuit court or the chief judge thereof shall
86 refer to the master the following matters for hearing to
87 be conducted in accordance with the provisions of
88 section two of this article:

89 (1) Actions to obtain orders of support brought under
90 the provisions of section one, article five of this chapter;

91 (2) All actions to establish paternity under the
92 provisions of article six of this chapter except such
93 actions wherein either or both of the parties have
94 demanded a trial by jury of the law and the facts by
95 the circuit court;

96 (3) All motions for child or spousal support pendente
97 lite;

98 (4) All actions and motions wherein child custody or
99 child visitation is in issue;

100 (5) All petitions for modification of an order involving
101 child custody, child visitation or child support or spousal
102 support; and

103 (6) All uncontested divorce actions wherein the
104 defending party has failed to answer or appear, or

105 having made an appearance has filed an answer
106 admitting irreconcilable differences or grounds for
107 divorce, has withdrawn his or her answer or other
108 responsive pleading, or has filed a notice of waiver of
109 further proceedings, and wherein all issues except the
110 question of whether or not a divorce should be granted
111 have been resolved;

112 (7) On and after the first day of September, one
113 thousand nine hundred eighty-six, all contested divorce
114 actions.

115 (j) A master shall hear, in addition to the matters
116 described in subsection (i) of this section, such other
117 domestic relation matters as may be referred to the
118 master by the court: *Provided*, That a master shall not
119 hear a case wherein an obligor is charged with criminal
120 contempt, when such obligor has not waived his right
121 to trial by jury.

122 (k) The fees for hearings before a master shall be paid
123 prior to the hearing in question unless a party is excused
124 from payment thereof under the provisions of section
125 one, article two, chapter fifty-nine of this code.

126 (l) Fees for hearings before a master shall be taxed
127 as court costs which costs may be assessed against either
128 party or between the parties, in the discretion of the
129 master. The assessment of court costs shall be included
130 as findings in each case of a master's order. The fees
131 for hearings before a master shall be as follows:

132 (1) For an action to establish an order of support, fifty
133 dollars;

134 (2) For an action to establish paternity, one hundred
135 dollars;

136 (3) For a motion for child or spousal support pendente
137 lite, fifty dollars;

138 (4) For an action to establish custody or visitation,
139 fifty dollars;

140 (5) For a petition for modification of an order
141 involving child custody, child visitation, child support or
142 spousal support, fifty dollars;

143 (6) For an uncontested divorce action, one hundred
144 dollars;

145 (7) For a final hearing in a contested divorce action,
146 thirty dollars per hour.

147 (m) Persons entitled to notice of a master's hearing
148 shall be timely informed of:

149 (1) The time, place and nature of the hearing;

150 (2) The legal authority and jurisdiction under which
151 the hearing is to be held; and

152 (3) The matters of fact and law asserted.

153 (n) The master shall give all interested parties
154 opportunity for the submission and consideration of
155 facts, arguments, offers of settlement or proposals of
156 adjustment when time, the nature of the proceedings
157 and the public interest permit. To the extent that the
158 parties are unable to determine a controversy by
159 consent, the master shall provide the parties a hearing
160 and decision in accordance with the provisions of
161 sections two and three of this article.

162 (o) The master who presides at a hearing pursuant to
163 section two of this article shall enter a master's final
164 order as required by section four of this article. Except
165 to the extent required for disposition of ex parte matters
166 as authorized by this chapter, a master may not consult
167 a person or party on a fact in issue, unless on notice and
168 opportunity for all parties to participate; nor shall the
169 master attempt to supervise or direct an employee or
170 agent engaged in the performance of investigative or
171 prosecuting functions for a prosecuting attorney, the
172 department of human services or any other agency or
173 political subdivision of this state.

§48A-4-2. Hearing procedures.

1 (a) This section applies, according to the provisions
2 thereof, to hearings required by section one of this
3 article to be conducted in accordance with this section.

4 (b) A master appointed under the provisions of section
5 one of this article shall preside at the hearing. The

6 functions of the master shall be conducted in an
7 impartial manner. A master may at any time disqualify
8 himself or herself. Upon such disqualification, or upon
9 the filing in good faith of a timely and sufficient
10 affidavit of personal bias or other disqualification of a
11 master, the circuit court or the chief judge thereof may
12 appoint a temporary master or the circuit court may
13 receive the evidence and determine the matter.

14 (c) A master presiding at a hearing under the
15 provisions of this chapter may:

16 (1) Administer oaths and affirmations, compel the
17 attendance of witnesses and the production of docu-
18 ments, examine witnesses and parties, and otherwise
19 take testimony and establish a record.

20 (2) Rule on offers of proof and receive relevant
21 evidence;

22 (3) Take depositions or have depositions taken when
23 the ends of justice may be served;

24 (4) Regulate the course of the hearing;

25 (5) Hold conferences for the settlement or simplifica-
26 tion of issues by consent of the parties;

27 (6) Dispose of procedural requests or similar matters;

28 (7) Accept voluntary acknowledgments of support
29 liability or paternity;

30 (8) Accept stipulated agreements;

31 (9) Prepare default orders for entry if the person
32 against whom an action is brought does not respond to
33 notice or process within the time required;

34 (10) Enter master's final orders in accordance with
35 the provisions of this article; and

36 (11) Take other action authorized by general order of
37 the circuit court or the chief judge thereof consistent
38 with this chapter.

39 (d) Except as otherwise provided by law, a moving
40 party has the burden of proof on a particular question
41 presented. Any oral or documentary evidence may be

42 received, but the master shall exclude irrelevant,
43 immaterial, or unduly repetitious evidence. A party is
44 entitled to present his or her case or defense by oral or
45 documentary evidence, to submit rebuttal evidence, and
46 to conduct such cross-examination as may be required
47 for a full and true disclosure of the facts. In determining
48 claims for money due or the amount of payments to be
49 made, when a party will not be prejudiced thereby, the
50 master may adopt procedures for the submission of all
51 or part of the evidence in written form.

52 (e) Hearings before a master shall be recorded
53 electronically. When requested by either of the parties,
54 a master shall make a transcript, verified by oath, of
55 each hearing held. Unless otherwise ordered by the
56 master, the cost of preparing a transcript shall be
57 apportioned equally between the parties.

58 (f) The recording of the hearing or the transcript of
59 testimony, as the case may be, and the exhibits, together
60 with all papers and requests filed in the proceeding,
61 constitute the exclusive record for decision in accor-
62 dance with section three of this article, and on payment
63 of lawfully prescribed costs, unless excused, shall be
64 made available to the parties. When a master's final
65 order rests on official notice of a material fact not
66 appearing in the evidence in the record, a party is
67 entitled, on timely request, to an opportunity to show the
68 contrary.

§48A-4-3. Default orders; temporary orders.

1 (a) In any proceeding in which the amount of support
2 is to be established, if the obligor has been served with
3 notice of a hearing before a master and does not enter
4 an appearance, the family law master shall enter a
5 master's final order which shall fix support in an
6 amount at least equal to the amount paid as public
7 assistance under section four, article three, chapter nine
8 of this code if the obligee or custodian receives public
9 assistance, or in an amount at least equal to the amount
10 that would be paid as public assistance where the
11 obligee or custodian does not receive public assistance,
12 unless the family law master has information by which

13 to determine the amount to be fixed in the default order
14 in accordance with the child support guidelines.

15 (b) A master who presides at a hearing under the
16 provisions of section two of this article is authorized to
17 enter interlocutory orders and temporary support orders
18 which, when entered, shall be enforceable and have the
19 same force and effect under law as a final order,
20 judgment or decree of the circuit court. Such orders
21 shall not be reviewable by the circuit court except upon
22 a petition for review of a master's final order entered
23 in the matter.

24 (c) All orders prepared by a master shall provide for
25 automatic withholding from income of the obligor if
26 arrearages in support occur, if no such provision already
27 exists in prior orders.

§48A-4-4. Master's final orders.

1 (a) This section applies, according to the provisions
2 thereof, when a hearing has been conducted in accor-
3 dance with section two of this article.

4 (b) A master who has presided at the hearing
5 pursuant to section two of this article shall enter with
6 the clerk of the court a master's final order. Before the
7 master's final order is entered, the master may, in his
8 discretion, require the parties to submit proposed
9 findings and conclusions and the supporting reasons
10 therefor.

11 (c) A copy of each report, recommendation, and any
12 supporting documents or a summary of supporting
13 documents, prepared or used by the children's advocate
14 or an employee of the child advocate office, and all
15 documents introduced into evidence before the master,
16 shall be made available to the attorney for each party
17 and to each of the parties after the master has concluded
18 the reception of evidence. In a child custody dispute the
19 parties shall be informed of whether a custody prefer-
20 ence expressed by the child was considered, evaluated,
21 and determined by the court, but the parties shall not
22 be informed of the preference expressed by the child.
23 If a guardian is appointed for a child, the guardian shall

24 be informed whether a custody preference expressed by
25 the child was considered, evaluated, and determined by
26 the court, and, if so, the preference expressed. The
27 manner and time within which this material is made
28 available shall be determined by supreme court rule.

29 (d) All master's final orders shall include a statement
30 of findings and conclusions, and the reasons or basis
31 therefor, on all the material issues of fact, law, or
32 discretion presented on the record and shall embody the
33 appropriate sanction, relief, or denial thereof.

34 (e) A master's final order shall be fully enforceable
35 upon entry by the master. If no petition for review is
36 timely filed as otherwise provided for in this article, the
37 master shall prepare a final order for entry by the court,
38 which such final order may either affirm the master's
39 final order or may set forth the terms of the master's
40 final order. If the circuit court shall fail to enter such
41 order, the master's final order shall continue to be of full
42 force and effect and shall be fully enforceable as though
43 such order had been entered by the court.

**§48A-4-5. Circuit court review of master's action or
master's final order.**

1 A person who alleges that he or she will suffer a legal
2 wrong because of the action of a master, or will be
3 adversely affected or aggrieved by a master's final
4 order, is entitled to review of the proceedings. The
5 master's final order is the subject of review by the
6 circuit court, and a preliminary or procedural action or
7 ruling not directly reviewable is subject to review only
8 upon the review of the master's final order by the circuit
9 court.

§48A-4-6. Procedure for review by circuit court.

1 (a) Within ten days after the entry of a master's final
2 order, any party may file exceptions thereto in a petition
3 requesting that the action be reviewed by the circuit
4 court upon the master's report. At the time of filing the
5 petition, a copy of the petition for review shall be served
6 on all parties to the proceeding, in the same manner as
7 pleadings subsequent to an original complaint are

8 served under rule five of the rules of civil procedure for
9 trial courts of record.

10 (b) Not more than ten days after the filing of the
11 petition for review, a responding party wishing to file
12 a cross-petition that would otherwise be untimely may
13 file, with proof of service on all parties, a cross-petition
14 for review.

§48A-4-7. Form of petition for review.

1 The petition for review shall contain, in the order
2 indicated:

3 (a) A table of contents and table of authorities.

4 (b) A list of exceptions in the form of questions
5 presented for review, expressed in the terms and
6 circumstances of the case but without unnecessary
7 detail. The statement of questions should be short and
8 concise and should not be argumentative or repetitious.
9 The statement of a question presented will be deemed
10 to comprise every subsidiary question fairly included
11 therein. Only the questions set forth in the petition or
12 fairly included therein will be considered by the court.

13 (c) Citations for the constitutional provisions, statutes
14 and regulations which the case involves.

15 (d) A concise statement of the case containing the facts
16 material to a consideration of the questions presented.

17 (e) A direct and concise argument amplifying the
18 reasons relied upon for remanding the case.

§48A-4-8. Brief in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing
2 of a petition within which to file an opposing brief
3 disclosing any matter or ground why the master's final
4 order should not be remanded by the court.

5 (b) No motion by a respondent to dismiss a petition
6 for review will be received.

7 (c) Within seven days after the filing of a brief in
8 opposition, a reply brief addressed to arguments first
9 raised in the brief in opposition may be filed by any

10 petitioner.

11 (d) Any party may file a supplemental brief at any
12 time while a petition for review is pending, calling
13 attention to new cases or legislation or other intervening
14 matter not available at the time of the party's last filing.

§48A-4-9. Circuit court review of master's final order.

1 (a) The circuit court shall proceed to a review of the
2 master's final order when a petition has been filed
3 within ten days of the entry of a master's final order.

4 (b) To the extent necessary for decision and when
5 presented, the circuit court shall decide all relevant
6 questions of law, interpret constitutional and statutory
7 provisions, and determine the appropriateness of the
8 terms of the master's final order.

9 (c) If a petition for review has been timely filed, the
10 circuit court shall examine the master's final order, and
11 may enter an order affirming the master's final order
12 or may remand the case upon a finding that the master's
13 final order is:

14 (1) Arbitrary, capricious, an abuse of discretion, or
15 otherwise not in conformance with the law;

16 (2) Contrary to constitutional right, power, privilege,
17 or immunity;

18 (3) In excess of statutory jurisdiction, authority, or
19 limitations, or short of statutory right;

20 (4) Without observance of procedure required by law;
21 or

22 (5) Unsupported by substantial evidence.

23 (d) In making its determinations under this section,
24 the circuit court shall review the whole record or those
25 parts of it cited by a party.

26 (e) The order of the circuit court affirming or
27 remanding shall be entered not later than twenty-one
28 days after the time for filing pleadings or briefs has
29 expired.

30 (f) If a case is remanded by the circuit court, the

31 master shall promptly retry the matter.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-1. Action to obtain an order for support of minor child.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-3. Withholding from income of amounts payable as support.

§48A-5-4. Liens against real and personal property for overdue support.

§48A-5-5. Enforcement of support orders by contempt proceedings; penalties.

§48A-5-6. Posting of bonds or giving security to guarantee payment of overdue support.

§48A-5-7. Visitation enforcement; contempt; penalties.

§48A-5-8. Procedures before the children's advocate.

§48A-5-1. Action to obtain an order for support of minor child.

1 (a) An action may be brought in circuit court to obtain
2 an order for the support of a minor child when:

3 (1) Such child has a parent and child relationship with
4 an obligor;

5 (2) Such obligor is not the primary caretaker or
6 guardian of the child;

7 (3) The obligor is not meeting an obligation to support
8 the child;

9 (4) An enforceable order for the support of the child
10 by the obligor has not been entered by a court of
11 competent jurisdiction; and

12 (5) There is no pending action for divorce, separate
13 maintenance, or annulment in which the obligation of
14 support owing from the obligor to the child is at issue.

15 (b) An action may be brought under the provisions of
16 subsection (a) of this section by:

17 (1) A custodial parent of a child, when the divorce
18 order or other order which granted custody did not
19 make provision for the support of the child by the
20 obligor;

21 (2) A primary caretaker of a child;

22 (3) A guardian of the property of a child or the
23 committee for a child; or

24 (4) The department of human services, when the
25 department is providing assistance on behalf of the child
26 in the form of aid to families with dependent children,
27 and an assignment of any right to support has been
28 assigned to the department.

29 (c) An action under the provisions of this section may
30 be brought in the county where the obligee, the obligor
31 or the child resides.

32 (d) If an action for child support is brought under the
33 provisions of this section by an obligee against his or her
34 spouse, such obligee may also seek spousal support from
35 the obligor, unless such support has been previously
36 waived by agreement or otherwise.

37 (e) On and after the effective date of this section, every
38 order issued or modified under the provisions of this
39 section shall include a provision for automatic withhold-
40 ing from income of the obligor if arrearages occur, in
41 order to facilitate income withholding as a means of
42 collecting support when such arrearages occur. Each
43 such order shall contain language authorizing income
44 withholding to commence without further court action,
45 under the following conditions:

46 (1) If the order requires payments to be made in
47 monthly installments, when the support payments
48 required by such order are thirty days or more in
49 arrears;

50 (2) If the order requires payments to be made in
51 weekly or bi-weekly installments, when the support
52 payments required by such order are twenty-eight days
53 or more in arrears; or

54 (3) If the obligor requests the child advocate office to
55 commence income withholding.

56 (f) At any time after the entry of an order for support,
57 the court may, upon the verified petition of an obligee
58 or the obligor, revise or alter such order, and make a
59 new order, as the altered circumstances or needs of a
60 child, an obligee, or the obligor may render necessary
61 to meet the ends of justice.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

1 (a) When an obligor is in arrears in the payment of
2 support which is required to be paid by the terms of an
3 order entered or modified by a court of competent
4 jurisdiction, an obligee may file an "Affidavit of
5 Accrued Support" with the clerk of the circuit court,
6 setting forth the particulars of such arrearage, and
7 requesting a writ of execution, suggestion or suggestee
8 execution. If the duty of support is based upon a foreign
9 support order, the obligee shall first register the foreign
10 support order with the clerk in the same manner as such
11 orders are registered in actions under the revised
12 uniform reciprocal enforcement of support act, sections
13 thirty-four, thirty-five, thirty-seven, and thirty-eight,
14 article seven of this chapter: *Provided*, That a copy of
15 the reciprocal enforcement of support law of the state
16 in which the order was made need not be filed with the
17 clerk.

18 (b) The affidavit may be filed in the county wherein
19 the obligee or the obligor resides, or where the obligor's
20 source of income is located.

21 (c) The affidavit may be filed when a payment
22 required by such order has been delinquent, in whole
23 or in part, for a period of fourteen days.

24 (d) The affidavit shall:

25 (1) Identify the obligee and obligor by name and
26 address, and shall list the obligor's social security
27 number or numbers, if known;

28 (2) Name the court which entered the support order
29 and set forth the date of such entry;

30 (3) State the total amount of accrued support which
31 has not been paid by the obligor;

32 (4) List the date or dates when support payments
33 should have been paid but were not, and the amount of
34 each such delinquent payment; and

35 (5) If known, the name and address of the obligor's
36 source of income.

37 (e) Upon receipt of the affidavit, the clerk shall issue
38 a writ of execution, suggestion or suggestee execution,
39 and shall mail a copy of the affidavit and a notice of the
40 filing of the affidavit to the obligor, at his last known
41 address. If the children's advocate is not acting on behalf
42 of the obligee in filing the affidavit, the clerk shall
43 forward a copy of the affidavit and the notice of the
44 filing to the children's advocate.

45 (f) The notice provided for in subsection (e) of this
46 section shall inform the obligor that if he or she desires
47 to contest the affidavit on the grounds that the amount
48 claimed to be in arrears is incorrect or that a writ of
49 execution, suggestion or suggestee execution is not
50 proper because of mistakes of fact, he or she must,
51 within fourteen days of the date of the notice, inform the
52 children's advocate in writing of the reasons why the
53 affidavit is contested and must request a meeting with
54 the children's advocate.

55 (g) Upon being informed by an obligor that he or she
56 desires to contest the affidavit, the children's advocate
57 shall inform the court of such fact, and the court shall
58 require the obligor to give security, post a bond, or give
59 some other guarantee to secure payment of overdue
60 support.

61 (h) The clerk of the circuit court shall make available
62 form affidavits for use under the provisions of this
63 section. Such form affidavits shall be provided to the
64 clerk by the child advocate office. The notice of the filing
65 of an affidavit shall be in a form prescribed by the child
66 advocate office.

**§48A-5-3. Withholding from income of amounts payable
as support.**

1 (a) An order which provides for the withholding of
2 amounts payable as support shall be enforced by the
3 children's advocate in accordance with the provisions of
4 this section. Every support order entered by a circuit
5 court or a magistrate of this state prior to the effective
6 date of this section and every support order entered by
7 a court of competent jurisdiction of another state shall
8 be considered to provide for an order of income

9 withholding by operation of law, notwithstanding the
10 fact that such support order does not in fact provide for
11 such an order of withholding. Under such orders,
12 income withholding shall be implemented under the
13 same circumstances and enforced in the same manner
14 as in the case of orders of withholding which are
15 included in support orders entered after the effective
16 date of this section.

17 (b)(1) When required to pursue the enforcement of an
18 order of support through the withholding of income in
19 accordance with the provisions of subsection (d), section
20 three, article three of this chapter, the children's
21 advocate shall cause the mailing of a notice pursuant to
22 this section when the support payments required by the
23 order are in arrears a specific number of days, as
24 follows:

25 (A) If the order requires support to be paid in monthly
26 installments, the notice shall be sent on the day when
27 the support payments are thirty days in arrears; or

28 (B) If the order requires support to be paid in weekly
29 or bi-weekly installments, the notice shall be sent on the
30 day when the support payments are twenty-eight days
31 in arrears.

32 (2) The number of days support payments are in
33 arrears shall be considered to be the total cumulative
34 number of days during which payments required by a
35 court order have been delinquent, whether or not such
36 days are consecutive.

37 (c) When the required payments are in arrears the
38 requisite number of days in a case, the children's
39 advocate shall immediately do the following:

40 (1) If there is an existing support order which has
41 been entered by a court of competent jurisdiction so that
42 withholding can occur without the need for any amend-
43 ment to the support order or for any further action by
44 a court, the children's advocate shall send the notice
45 prescribed by the provisions of subsection (d) of this
46 section; or

47 (2) If there is no existing support order upon which

48 withholding can be based, either by its terms or by
49 operation of law, the children's advocate shall commence
50 an action to obtain a support order in accordance with
51 the provisions of section one of this article, so as to
52 establish a support order which provides for
53 withholding.

54 (d) If notice required by subsection (b) of this section
55 is appropriate, the children's advocate shall determine
56 the time for a meeting between the obligor and the
57 children's advocate and the time for a hearing before the
58 family law master, and shall then set forth in such
59 notice the times and places at which the meeting and
60 hearing will be held if withholding is contested. The
61 meeting and hearing may be scheduled on the same
62 date, but in no case shall the meeting with the advocate
63 be scheduled less than fifteen days after the date the
64 notice is mailed nor shall the hearing before the master
65 be scheduled more than twenty-one days after the date
66 the notice is mailed. The children's advocate shall send
67 such notice by first class mail to the delinquent obligor.
68 The notice shall inform the delinquent obligor of the
69 following:

70 (1) The amount owed;

71 (2) That it is proposed that there be withholding from
72 the obligor's income of amounts payable as support, and
73 that if withholding is uncontested, or is contested but
74 determined appropriate, the amount withheld will be
75 equal to the amount required under the terms of the
76 current support order, plus amounts for any outstanding
77 arrearages;

78 (3) An identification of the type or types of income
79 from which amounts payable as support will be with-
80 held, and a statement of the amounts proposed to be
81 withheld, expressed in meaningful terminology such as
82 dollar amounts or a percentage of disposable earnings,
83 as may be appropriate for the type of income involved;

84 (4) That the withholding will apply to the obligor's
85 present source of income and to any future source of
86 income;

87 (5) That any action by the obligor to purposefully
88 minimize his or her income will result in the enforce-
89 ment of support being based upon potential and not just
90 actual earnings;

91 (6) That payment of the arrearage after the date of
92 the notice is not a bar to such withholding;

93 (7) That if the obligor wishes to agree to withholding
94 that he or she should notify the children's advocate, in
95 writing, within fourteen days from the date of the notice
96 in order to cancel a scheduled meeting with the office
97 of the children's advocate and a hearing with the family
98 law master;

99 (8) That if the obligor fails to respond to the notice
100 or fails to appear at the meeting or hearing after
101 responding to the notice, withholding will automatically
102 occur as described in the notice;

103 (9) That if the obligor desires to contest the withhold-
104 ing on the grounds that the amount to be withheld is
105 incorrect or that withholding is not proper because of
106 mistakes of fact, he or she must, within fourteen days
107 of the date of the notice, inform the children's advocate
108 in writing of the reasons why the proposed withholding
109 is contested;

110 (10) That a mistake of fact exists only when there is
111 an error in the amount of current or overdue support
112 claimed in the notice, there is a mistake as to the
113 identity of the obligor, or the amount of the proposed
114 withholding exceeds the amount permitted to be
115 withheld under applicable federal or state law;

116 (11) That matters such as lack of visitation,
117 inappropriateness of the support award, or changed
118 financial circumstances of the obligee or the obligor will
119 not be considered at any hearing held pursuant to the
120 notice, but may be raised by the filing of a separate
121 petition;

122 (12) That if the obligor contests the withholding, in
123 writing, a meeting with the children's advocate will be
124 held at a time and place set forth in the notice, for the
125 purpose of attempting to settle any issues which are

126 contested;

127 (13) That if the meeting with the children's advocate
128 fails to resolve the issues being contested, a hearing
129 before the family law master will be held at a time and
130 place set forth in the notice, and that following such
131 hearing, the master will enter a master's final order;
132 and

133 (14) That a master's final order as to withholding will
134 become effective when it is entered by the master, and
135 that if the obligor disagrees with the master's final
136 order, he or she will be given the opportunity to make
137 objections known to the circuit court.

138 (f) After a final determination that withholding should
139 occur, the children's advocate shall proceed to withhold
140 so much of the obligor's income as is necessary to comply
141 with the order authorizing such withholding, up to the
142 maximum amount permitted under applicable law.
143 Such withholding, unless otherwise terminated under
144 the provisions of this section, shall apply to any
145 subsequent source of income or any subsequent period
146 of time during which income is received by the obligor.

147 (g) The amount of an obligor's aggregate disposable
148 earnings for any given workweek which can be withheld
149 as support payments is to be determined in accordance
150 with the provisions of this subsection, as follows:

151 (1) After ascertaining the status of the payment record
152 of the obligor under the terms of the support order, the
153 payment record shall be examined to determine whether
154 any arrearages are due for amounts which should have
155 been paid prior to a twelve week period which ends with
156 the workweek for which withholding is sought to be
157 enforced.

158 (2) If none of the withholding is for amounts which
159 came due prior to such twelve week period, then:

160 (A) When the obligor is supporting another spouse or
161 dependent child other than the spouse or child for whom
162 the proposed withholding is being sought, the amount
163 withheld may not exceed fifty percent of the obligor's
164 disposable earnings for that week; and

165 (B) When the obligor is not supporting another spouse
166 or dependent child as described in paragraph (A) of this
167 subdivision, the amount withheld may not exceed sixty
168 percent of the obligor's disposable earnings for that
169 week.

170 (3) If a part of the withholding is for amounts which
171 came due prior to such twelve week period, then:

172 (A) Where the obligor is supporting another spouse or
173 dependent child other than the spouse or child for whom
174 the proposed withholding is being sought, the amount
175 withheld may not exceed fifty-five percent of the
176 obligor's disposable earnings for that week; and

177 (B) Where the obligor is not supporting another spouse
178 or dependent child as described in paragraph (A) of this
179 subdivision, the amount withheld may not exceed sixty-
180 five percent of the obligor's disposable earnings for that
181 week.

182 (4) In addition to the percentage limitations set forth
183 in subdivisions (2) and (3) of this subsection, it shall be
184 a further limitation that in no case shall the total
185 amounts withheld for current payments plus arrearages
186 exceed the amounts withheld for current payments by
187 an amount greater than ten percent of the obligor's
188 disposable income.

189 (5) The provisions of this subsection shall apply
190 directly to the withholding of disposable earnings of an
191 obligor regardless of whether the obligor is paid on a
192 weekly, biweekly, monthly or other basis.

193 (6) If an obligor acts so as to purposefully minimize
194 his or her income and to thereby circumvent the
195 provisions of this section which provide for withholding
196 from income of amounts payable as support, the amount
197 to be withheld as support payments may be based upon
198 the obligor's potential earnings rather than his or her
199 actual earnings, and such obligor may not rely upon the
200 percentage limitations set forth in this subsection which
201 limit the amount to be withheld from disposable
202 earnings.

203 (h) The source of income of any obligor who is subject

204 to withholding, upon being given notice of withholding,
205 shall withhold from such obligor's income the amount
206 specified by the notice and pay such amount to the child
207 advocate office for distribution in accordance with the
208 provisions of section four, article three of this chapter.
209 The notice given to the source of income shall contain
210 only such information as may be necessary for the
211 source of income to comply with the withholding order.
212 Such notice to the source of income shall include, at a
213 minimum, the following:

214 (1) The amount to be withheld from the obligor's
215 income, and a statement that the amount to be withheld
216 for support and other purposes, including the fee
217 specified under subdivision (3) of this subsection, may
218 not be in excess of the maximum amounts permitted
219 under section 303(b) of the Federal Consumer Credit
220 Protection Act or limitations imposed under the provi-
221 sions of this code;

222 (2) That the source of income must send the amount
223 to be withheld from the obligor's income to the child
224 advocate office within ten days of the date the obligor
225 is paid;

226 (3) That, in addition to the amount withheld under the
227 provisions of subdivision (1) of this subsection, the source
228 of income may deduct a fee, not to exceed fifty cents,
229 for administrative costs incurred by the source of
230 income, for each withholding;

231 (4) That withholding is binding on the source of
232 income until further notice by the child advocate office;

233 (5) That the source of income is subject to a fine for
234 discharging an obligor from employment, refusing to
235 employ, or taking disciplinary action against any obligor
236 because of the withholding;

237 (6) That if the source of income fails to withhold
238 income in accordance with the provisions of the notice,
239 the source of income is liable for the accumulated
240 amount the source of income should have withheld from
241 the obligor's income;

242 (7) That the withholding under the provisions of this

243 section shall have priority over any other legal process
244 under the laws of this state against the same income;

245 (8) That the source of income may combine withheld
246 amounts from obligors' income in a single payment to
247 the child advocate office and separately identify the
248 portion of the single payment which is attributable to
249 each obligor;

250 (9) That the source of income must implement
251 withholding no later than the first pay period or first
252 date for payment of income that occurs after fourteen
253 days following the date the notice to the source of income
254 was mailed; and

255 (10) That the source of income must notify the child
256 advocate office promptly when the obligor terminates
257 his or her employment or otherwise ceases receiving
258 income from the source of income, and must provide the
259 obligor's last known address and the name and address
260 of the obligor's new source of income, if known.

261 (i) The director shall, by administrative rule, establish
262 procedures for promptly refunding to obligors amounts
263 which have been improperly withheld under the
264 provisions of this section.

265 (j) A source of income must send the amount to be
266 withheld from the obligor's income to the child advocate
267 office within ten days of the date the obligor is paid.

268 (k) In addition to any amounts payable as support
269 withheld from the obligor's income, the source of income
270 may deduct a fee, not to exceed fifty cents, for admi-
271 nistrative costs incurred by the source of income, for
272 each withholding.

273 (l) Withholding of amounts payable as support under
274 the provisions of this section is binding on the source of
275 income until further notice by the child advocate office.

276 (m) Every source of income who receives a notice of
277 withholding under the provisions of this section shall
278 implement withholding no later than the first pay
279 period or first date for the payment of income which
280 occurs after fourteen days following the date the notice

281 to the source of income was mailed.

282 (n) A source of income who employs or otherwise pays
283 income to an obligor who is subject to withholding under
284 the provisions of this section must notify the child
285 advocate office promptly when the obligor terminates
286 employment or otherwise ceases receiving income from
287 the source of income, and must provide the office with
288 the obligor's last known address and the name and
289 address of the obligor's new source of income, if known.

290 (o) A source of income who has more than a single
291 obligor who is subject to withholding from income under
292 the provisions of this article may combine all withheld
293 amounts into a single payment to the child advocate
294 office, with the portion thereof which is attributable to
295 each obligor being separately designated.

296 (p) A source of income is liable to an obligee, including
297 the state of West Virginia or the department of human
298 services where appropriate, for any amount which the
299 source of income fails to withhold from income due an
300 obligor following receipt by such source of income of
301 proper notice under subsection (h) of this section:
302 *Provided*, That a source of income shall not be required
303 to vary the normal pay and disbursement cycles in order
304 to comply with the provisions of this section.

305 (q) Support collection under the provisions of this
306 article shall have priority over any other legal process
307 under state law against the same wages.

308 (r) Any source of income who discharges from
309 employment, refuses to employ, or takes disciplinary
310 action against any obligor subject to income withholding
311 required by this section because of the existence of such
312 withholding and the obligations or additional obligations
313 which it imposes on the source of income, shall be guilty
314 of a misdemeanor, and, upon conviction thereof, shall be
315 fined not less than five hundred dollars or more than
316 one thousand dollars.

317 (s) At any time following a period of eighteen months
318 during which the obligor has owed no arrearages to the
319 obligee or to the state of West Virginia or any other

320 state, if the obligee and obligor agree to the termination
321 of withholding and demonstrate to the children's
322 advocate that there is a reliable alternative method by
323 which to make the support payments, they may request
324 the children's advocate to terminate withholding and
325 such withholding from income may cease until such
326 time as further withholding is required by law. The
327 director of the child advocate office shall, by legislative
328 rule, establish state termination standards which will
329 ensure, at a minimum, that withholding will not be
330 terminated where there are indications that it is
331 unlikely that support will continue without such
332 withholding. The mere fact that all arrearages have
333 been paid shall not be a sufficient ground for the
334 termination of withholding.

**§48A-5-4. Liens against real and personal property for
overdue support.**

1 An order for support entered by a court of competent
2 jurisdiction will give rise to a lien imposed against real
3 and personal property for amounts of overdue support
4 owed by an obligor who resides or owns property within
5 this state when the provisions of section seventeen,
6 article two, chapter forty-eight of this code have been
7 complied with: *Provided*, That a foreign order shall first
8 be registered as a foreign support order with the clerk
9 in the same manner as such orders are registered in
10 actions under the revised uniform reciprocal
11 enforcement of support act, sections thirty-four, thirty-
12 five, thirty-seven and thirty-eight, article seven of this
13 chapter: *Provided*, That a copy of the reciprocal
14 enforcement of support law of the state in which the
15 order was made need not be filed with the clerk.

**§48A-5-5. Enforcement of support orders by contempt
proceedings; penalties.**

1 (a)(1) In addition to or in lieu of the other remedies
2 provided by this article for the enforcement of support
3 orders, the office of the children's advocate may
4 commence a civil or criminal contempt proceeding in
5 accordance with the provisions of section twenty-two,
6 article two, chapter forty-eight of this code against an

7 obligor who is alleged to have willfully failed or refused
8 to comply with the order of a court of competent
9 jurisdiction requiring the payment of support. Such
10 proceeding shall be instituted by filing with the circuit
11 court a petition for an order to show cause why the
12 obligor should not be held in contempt.

13 (2) If the court finds that the obligor willfully failed
14 or refused to comply with an order requiring the
15 payment of support, the court shall find the obligor in
16 contempt and may do one or more of the following:

17 (A) Require additional terms and conditions consistent
18 with the court's support order.

19 (B) After notice to both parties and a hearing, if
20 requested by a party, on any proposed modification of
21 the order, modify the order in the same manner and
22 under the same requirements as an order requiring the
23 payment of support may be modified under the provi-
24 sions of subsection (d), section fifteen, article two,
25 chapter forty-eight of this code. A modification sought
26 by an obligor, if otherwise justified, shall not be denied
27 solely because the obligor is found to be in contempt.

28 (C) Order that all accrued support and interest
29 thereon be paid under such terms and conditions as the
30 court, in its discretion, may deem proper.

31 (D) If appropriate under the provisions of section
32 twenty-two, article two, chapter forty-eight of this code:

33 (i) Commit the contemnor to the county jail; or

34 (ii) Commit the contemnor to the county jail with the
35 privilege of leaving the jail, during such hours as the
36 court determines and under such supervision as the
37 court considers necessary, for the purpose of allowing
38 the contemnor to go to and return from his or her place
39 of employment.

40 (3) A commitment under paragraph (D), subdivision
41 (2) of this subsection shall not exceed forty-five days for
42 the first adjudication of contempt or ninety days for any
43 subsequent adjudication of contempt.

44 (4) An obligor committed under paragraph (D),

45 subdivision (2) of this subsection shall be released if the
46 court has reasonable cause to believe that the obligor
47 will comply with the court's orders.

48 (5) If an obligor is committed to jail under the
49 provisions of subparagraph (ii), paragraph (D), subdivi-
50 sion (2) of this subsection and violates the conditions of
51 the court, the court may commit the person to the county
52 jail without the privilege provided under said subpara-
53 graph (ii) for the balance of the period of commitment
54 imposed by the court.

55 (6) If a person is committed to jail under the provi-
56 sions of subparagraph (ii), paragraph (D), subdivision
57 (2) of this subsection and willfully fails to return to the
58 place of confinement within the time prescribed, such
59 person shall be considered to have escaped from custody
60 and shall be guilty of a misdemeanor, punishable by
61 imprisonment for not more than one year.

**§48A-5-6. Posting of bonds or giving security to guaran-
tee payment of overdue support.**

1 (a) An obligor with a pattern of overdue support may
2 be required by order of the master or the court to post
3 bond, give security or some other guarantee to secure
4 payment of overdue support. Said guarantee may
5 include an order requiring that stocks, bonds or other
6 assets of the obligor be held in escrow by the court until
7 the obligor pays the support.

8 (b) No less than fifteen days before such an order may
9 be entered the children's advocate shall cause the
10 mailing of a notice by first class mail to the obligor
11 informing the obligor of the impending action, his or her
12 right to contest it, and setting forth a date, time and
13 place for a meeting with the children's advocate and the
14 date, time and place of a hearing before the family law
15 master if the impending action is contested.

§48A-5-7. Visitation enforcement; contempt; penalties.

1 (a) Except as provided in subsection (b) of this section,
2 the children's advocate may do either of the following
3 in a dispute concerning visitation of a minor child:

4 (1) Apply a visitation adjustment policy established in
5 accordance with the provisions of subsection (c) of this
6 section, or

7 (2) Commence contempt proceedings under the
8 provisions of this section.

9 (b) The children's advocate shall not invoke either
10 option under subsection (a) of this section if the parties
11 resolve their dispute through an informal joint meeting
12 with the children's advocate.

13 (c) Each children's advocate may formulate a visita-
14 tion adjustment policy which may be implemented by
15 the children's advocate after it is approved by the chief
16 judge of the circuit. Such policy shall be applied to the
17 following visitation violations:

18 (1) Where a noncustodial parent has been wrongfully
19 denied visitation; or

20 (2) Where a custodial parent has had his or her right
21 to custody infringed upon by the actions of a noncusto-
22 dial parent who has abused or exceeded his or her right
23 of visitation.

24 (d) A visitation adjustment policy formulated and
25 approved under the provisions of this section shall
26 include all of the following:

27 (1) An adjustment of visitation shall be applied to the
28 same type and duration of visitation as the visitation
29 that was denied by the custodial parent or exceeded by
30 the noncustodial parent, including, but not limited to,
31 weekend visitation for weekend visitation, holiday
32 visitation for holiday visitation, weekday visitation for
33 weekday visitation, and summer visitation for summer
34 visitation.

35 (2) An adjustment of visitation shall be scheduled to
36 occur within thirteen months after the visitation
37 violation occurred.

38 (3) The time of the visitation adjustment shall be
39 chosen by the parent whose right of visitation or custody
40 was violated.

41 (e) If a visitation adjustment policy is formulated and
42 approved under this section, the office of the children's
43 advocate shall keep an accurate record of alleged
44 visitation violations reported to the children's advocate.
45 A parent claiming a visitation violation shall give to the
46 children's advocate a written claim of such alleged
47 visitation violation within seven days after the actions
48 complained of are alleged to have occurred.

49 (f) If a visitation violation is alleged in a county in
50 which a visitation adjustment policy has been formu-
51 lated and approved under this section, the following
52 shall apply:

53 (1) Within five days after receipt of a claim of a
54 visitation violation, the office of the children's advocate
55 shall mail to the parent who is alleged to have commit-
56 ted the violation, a notice by first class mail, directed
57 to such person's last known address. The notice shall
58 inform the parent of the following:

59 (A) When the visitation violation is alleged to have
60 occurred;

61 (B) That it is proposed that a visitation adjustment be
62 granted to the complaining parent;

63 (C) That if the parent alleged to have committed the
64 visitation violation wishes to agree to a visitation
65 adjustment he or she must notify the children's advo-
66 cate, in writing, within fourteen days from the date of
67 the notice, and must request a meeting with the
68 children's advocate;

69 (D) That if he or she desires to contest the application
70 of the visitation adjustment policy on the grounds that
71 the claim of a visitation violation is incorrect or that a
72 visitation adjustment is not proper because of mistakes
73 of fact, he or she must, within fourteen days of the date
74 of the notice, inform the children's advocate in writing
75 of the reasons why the proposed adjustment is contested
76 and must request a meeting with the children's
77 advocate.

78 (2) After a final determination as to whether visitation
79 was wrongfully denied by the custodial parent or the

80 right of visitation was exceeded or abused by the
81 noncustodial parent, the office of the children's advocate
82 shall adjust the records of visitation violations
83 accordingly.

84 (3) The parent found to be entitled to a visitation
85 adjustment shall give to the office of the children's
86 advocate and the other parent a written notice of the
87 time the visitation adjustment will occur. Such notice
88 shall be given at least ten days before a makeup
89 weekday or weekend visitation or at least thirty days
90 before a makeup holiday or makeup summer visitation.

91 (g)(1) Except as provided in subsection (b) of this
92 section, the office of the children's advocate may
93 commence a civil or criminal contempt proceeding in
94 accordance with the provisions of section twenty-two,
95 article two, chapter forty-eight of this code to resolve a
96 dispute concerning visitation of a minor child by filing
97 with the circuit court a petition for an order to show
98 cause why the parent alleged to have committed the
99 visitation violation should not be held in contempt.

100 (2) If the court finds that the parent committed the
101 visitation violation, the court shall find the parent in
102 contempt and may do one or more of the following:

103 (A) Require additional terms and conditions consistent
104 with the court's visitation order.

105 (B) After notice to both parties and a hearing, if
106 requested by a party, on any proposed modification of
107 visitation, modify the visitation order to meet the best
108 interests of the child. A modification sought by a parent
109 charged with a visitation violation, if otherwise justified,
110 shall not be denied solely because the parent is found
111 to be in contempt.

112 (C) Order that a visitation adjustment be made.

113 (D) If appropriate under the provisions of section
114 twenty-two, article two, chapter forty-eight of this code:

115 (i) Commit the contemnor to the county jail; or

116 (ii) Commit the contemnor to the county jail with the
117 privilege of leaving the jail, during such hours as the

118 court determines and under such supervision as the
119 court considers necessary, for the purpose of allowing
120 the contemnor to go to and return from his or her place
121 of employment.

122 (3) A commitment under paragraph (D), subdivision
123 (2) of this subsection shall not exceed forty-five days for
124 the first adjudication of contempt or ninety days for any
125 subsequent adjudication of contempt.

126 (4) A parent committed under paragraph (D), subdivi-
127 sion (2) of this subsection shall be released if the court
128 has reasonable cause to believe that the parent will
129 comply with the visitation order.

130 (5) If a parent is committed to jail under the provi-
131 sions of subparagraph (ii), paragraph (D), subdivision
132 (2) of this subsection and violates the conditions of the
133 court, the court may commit the person to the county
134 jail without the privilege provided under said subpara-
135 graph (ii) for the balance of the period of commitment
136 imposed by the court.

137 (6) If a person is committed to jail under the provi-
138 sions of subparagraph (ii), paragraph (D), subdivision
139 (2) of this subsection and willfully fails to return to the
140 place of confinement within the time prescribed, such
141 person shall be considered to have escaped from custody
142 and shall be guilty of a misdemeanor, punishable by
143 imprisonment for not more than one year.

§48A-5-8. Procedures before the children's advocate.

1 (a) In any case arising under the provisions of this
2 article wherein a notice is served upon a person
3 requiring him or her to notify the children's advocate
4 if the person is contesting action proposed to be taken
5 against him:

6 (1) If the person so notified does not submit written
7 reasons for contesting the action within the time set to
8 contest the proposed action, and does not request a
9 meeting with the children's advocate, then the children's
10 advocate shall proceed with the proposed action; or

11 (2) If the person so notified does submit written

12 reasons for contesting the action within the time set to
 13 contest the proposed action, and requests a meeting with
 14 the children's advocate, then the children's advocate
 15 shall schedule a meeting at the earliest practicable time
 16 with the person and attempt to resolve the matter
 17 informally.

18 (b) If the matter cannot be resolved informally, the
 19 children's advocate shall make a determination as to
 20 whether the proposed action is proper and should
 21 actually occur.

22 (c) The determination of the children's advocate shall
 23 be made within forty-five days from the date of the
 24 notice which first apprised the person of the proposed
 25 action. Upon making the determination, the children's
 26 advocate shall inform the obligor as to whether or not
 27 the proposed action will occur, and, if it is to occur, of
 28 the date on which it is to begin, and in the case of
 29 withholding from income, shall furnish the obligor with
 30 the information contained in any notice given to an
 31 employer under the provisions of subsection (h), section
 32 three of this article with respect to such withholding.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Action for establishment of paternity.

§48A-6-2. Statute of limitations; prior statute of limitations not a bar to
 action under this article; effect of prior adjudication
 between husband and wife.

§48A-6-3. Medical testing procedures to aid in the determination of
 paternity.

§48A-6-4. Establishment of paternity and duty of support.

§48A-6-5. Representation of parties.

§48A-6-1. Action for establishment of paternity.

1 A civil action to establish the paternity of a child and
 2 to obtain an order of support for the child may be
 3 instituted, by verified complaint, in the circuit court of
 4 the county where the plaintiff, the defendant or the child
 5 resides. Such action may be brought by any of the
 6 following persons:

7 (1) An unmarried woman with physical or legal
 8 custody of a child to whom she gave birth;

9 (2) A married woman with physical or legal custody

10 of a child to whom she gave birth, if the complaint
11 alleges that:

12 (A) Such married woman lived separate and apart
13 from her husband for a period of one year or more
14 immediately preceding the birth of the child;

15 (B) Such married woman did not cohabit with her
16 husband at any time during such separation and that
17 such separation has continued without interruption; and

18 (C) The defendant, rather than her husband, is the
19 father of the child.

20 (3) Any person, including the state of West Virginia
21 or the department of human services, who is not the
22 mother of the child, but who has physical or legal
23 custody of such child;

24 (4) The guardian or committee of such child;

25 (5) The next friend of such child when the child is a
26 minor; or

27 (6) By such child in his own right at any time after
28 the child's eighteenth birthday but prior to the child's
29 twenty-first birthday.

**§48A-6-2. Statute of limitations; prior statute of limita-
tions not a bar to action under this article;
effect of prior adjudication between hus-
band and wife.**

1 (a) Except for an action brought by a child in his or
2 her own right under the provisions of subdivision (6),
3 subsection (a), section one of this article, an action for
4 the establishment of the paternity of a child shall be
5 brought prior to such child's eighteenth birthday.

6 (b) An action to establish paternity under the provi-
7 sions of this article may be brought by or on behalf of
8 a child notwithstanding the fact that, prior to the
9 effective date of this section, an action to establish
10 paternity may have been barred by a prior statute of
11 limitations set forth in this code or otherwise provided
12 for by law.

13 (c) Any other provision of law to the contrary

14 notwithstanding, when a husband and wife or former
15 husband and wife, in an action for divorce or an action
16 to obtain a support order, have litigated the issue of the
17 paternity of a child conceived during their marriage to
18 the end that the husband has been adjudged not to be
19 the father of such child, such prior adjudication of the
20 issue of paternity between the husband and the wife
21 shall not preclude the mother of such child from
22 bringing an action against another person to establish
23 paternity under the provisions of this article.

**§48A-6-3. Medical testing procedures to aid in the
determination of paternity.**

1 (a) The court may, on its own motion, or upon the
2 motion of any party, order the mother, her child and the
3 defendant to submit to blood tests or tissue tests to aid
4 the court in proving or disproving paternity. If such
5 tests are ordered, the court shall direct that the
6 inherited characteristics, including, but not limited to,
7 blood types, be determined by appropriate testing
8 procedures at a hospital, independent medical institu-
9 tion or independent medical laboratory, duly licensed
10 under the laws of this State, or any other state, and shall
11 appoint an expert qualified as an examiner of genetic
12 markers to analyze and interpret the results and to
13 report to the court. The court shall consider the results
14 as follows:

15 (1) Blood or tissue test results which exclude the
16 defendant as the father of the child are admissible and
17 shall be clear and convincing evidence of nonpaternity
18 and the court shall, upon considering such evidence,
19 dismiss the action.

20 (2) Blood or tissue test results which show a statistical
21 probability of paternity of more than seventy-five
22 percent are admissible and shall be weighed along with
23 other evidence of the defendant's paternity.

24 (3) If the results of the blood or tissue tests or the
25 expert's analysis of inherited characteristics is disputed,
26 the court, upon reasonable request of a party, shall order
27 that additional tests be made by the same laboratory or
28 another laboratory at the expense of the party request-

29 ing additional testing.

30 (b) Verified documentation of the chain of custody of
31 the blood or tissue specimens is competent evidence to
32 establish such chain of custody. A verified expert's
33 report shall be admitted at trial unless a challenge to
34 the testing procedures or a challenge to the results of
35 test analysis has been made before trial. The costs and
36 expenses of making such tests shall be paid by the
37 parties in proportions and at times determined by the
38 court.

§48A-6-4. Establishment of paternity and duty of support.

1 If the defendant, by verified responsive pleading shall
2 admit that he is the father of the child and owes a duty
3 of support, or if after a trial on the merits, the court
4 or jury shall find, by clear and convincing evidence that
5 the defendant is the father of the child, the court shall
6 order the defendant to provide support in accordance
7 with the provisions of this chapter.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
2 action under this section is brought shall represent the
3 plaintiff.

4 (b) The defendant shall be advised of his right to
5 counsel. In the event he files an affidavit that he is a
6 poor person within the meaning of section one, article
7 two, chapter fifty-nine of this code, counsel shall be
8 appointed to represent him. The service and expenses of
9 counsel shall be paid in accordance with the provisions
10 of article twenty-one, chapter twenty-nine of this code:
11 *Provided*, That the court shall make a finding of
12 eligibility for appointed counsel in accordance with the
13 requirements of said article and, if the person qualifies,
14 any blood or tissue tests ordered to be taken shall be
15 paid as part of the costs of the proceeding.

ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

§48A-7-1. Purposes.

§48A-7-2. Definitions.

- §48A-7-3. Remedies cumulative.
- §48A-7-4. Extent of duties of support.
- §48A-7-5. Interstate rendition.
- §48A-7-6. Conditions of interstate rendition.
- §48A-7-7. Law governing duty of support; presumption as to presence of obligor.
- §48A-7-8. Remedies of state or political subdivision furnishing support.
- §48A-7-9. How duties of support enforced.
- §48A-7-10. Jurisdiction.
- §48A-7-11. Contents and filing of petition for support; venue.
- §48A-7-12. Children's advocate to represent obligee.
- §48A-7-13. Petition for a minor.
- §48A-7-14. Duty of initiating court.
- §48A-7-15. Costs and fees.
- §48A-7-16. Jurisdiction by arrest.
- §48A-7-17. State information agency.
- §48A-7-18. Duty of court and officials of this state as responding state.
- §48A-7-19. Further duties of court and officials in responding state.
- §48A-7-20. Hearing and continuance.
- §48A-7-21. Evidence of husband and wife.
- §48A-7-22. Rules of evidence.
- §48A-7-23. Order of support.
- §48A-7-24. Responding court to transmit copies to initiating court.
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- §48A-7-26. Adjudication of issue of paternity.
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- §48A-7-29. Proceedings not to be stayed because of pending or prior action; support order pendente lite.
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- §48A-7-31. Application of article where obligee and obligor are in different counties in this state.
- §48A-7-32. Appeals.
- §48A-7-33. Additional remedies for enforcement of foreign support order.
- §48A-7-34. Registration of foreign support order.
- §48A-7-35. Check to maintain registry of foreign support orders.
- §48A-7-36. Children's advocate to represent obligee.
- §48A-7-37. Registration procedure; notice; children's advocate to enforce order.
- §48A-7-38. Effect of registration; enforcement procedure.
- §48A-7-39. Uniformity of interpretation.
- §48A-7-40. Short title.
- §48A-7-41. Severability.

§48A-7-1. Purposes.

- 1 The purposes of this article are to improve and extend
- 2 by reciprocal legislation the enforcement of duties of support.

§48A-7-2. Definitions.

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

3 (1) "Court" means a circuit court of this state, and,
4 when the context requires, means a court of competent
5 jurisdiction of any other state as defined in a substan-
6 tially similar reciprocal law.

7 (2) "Duty of support" means a duty of support whether
8 imposed or imposable by law or by order, decree or
9 judgment of any court, of competent jurisdiction,
10 whether interlocutory or final, or whether incidental to
11 an action for divorce, separation, separate maintenance
12 or otherwise and includes the duty to pay arrearages of
13 support past due and unpaid.

14 (3) "Governor" includes any person performing the
15 functions of governor or the executive authority of any
16 state covered by this article.

17 (4) "Initiating state" means a state in which a
18 proceeding pursuant to this or a substantially similar
19 reciprocal law is commenced. "Initiating court" means
20 the court in which a proceeding is commenced.

21 (5) "Law" includes both common and statutory law.

22 (6) "Obligee" means, in addition to the meaning
23 ascribed to it in section one, article one of this chapter,
24 a person including a state or political subdivision to
25 whom a duty of support is owed or a person including
26 a state or political subdivision that has commenced a
27 proceeding for enforcement of an alleged duty of
28 support or for registration of a support order. It is
29 immaterial if the person to whom a duty of support is
30 owed is a recipient of public assistance.

31 (7) "Obligor" means, in addition to the meaning
32 ascribed to it in section one, article one of this chapter,
33 any person owing a duty of support or against whom a
34 proceeding for the enforcement of a duty of support or
35 registration of a support order is commenced.

36 (8) "Register" means to record in the registry of
37 foreign support orders.

38 (9) "Registering court" means any court of this state

39 in which a support order of a rendering state is
40 registered.

41 (10) "Rendering state" means a state in which the
42 court has issued a support order for which registration
43 is sought or granted in the court of another state.

44 (11) "Responding state" means a state in which any
45 responsive proceeding pursuant to the proceeding in the
46 initiating state is commenced. "Responding court"
47 means the court in which the responsive proceeding is
48 commenced.

49 (12) "State" includes a state, territory or possession
50 of the United States, the District of Columbia, the
51 Commonwealth of Puerto Rico and any foreign jurisdic-
52 tion in which this or a substantially similar reciprocal
53 law is in effect.

54 (13) "Support enforcement officer" means the child-
55 ren's advocate in this state or the prosecuting attorney
56 or other public official in another state who has the duty
57 to enforce criminal or civil laws relating to the failure
58 to provide for the support of any person.

59 (14) "Support order" means any judgment, decree or
60 order of support in favor of an obligee whether tempor-
61 ary or final, or subject to modification, revocation or
62 remission, regardless of the kind of action or proceeding
63 in which it is entered.

§48A-7-3. Remedies cumulative.

1 The remedies herein provided are in addition to and
2 not in substitution for any other remedies.

§48A-7-4. Extent of duties of support.

1 Duties of support arising under the law of this state,
2 when applicable under section seven, bind the obligor
3 present in this state regardless of the presence or
4 residence of the obligee.

§48A-7-5. Interstate rendition.

1 The governor of this state may:
2 (1) Demand of the governor of another state the

3 surrender of a person found in that state who is charged
4 criminally in this state with failing to provide for the
5 support of any person; or

6 (2) Surrender on demand by the governor of another
7 state a person found in this state who is charged
8 criminally in that state with failing to provide for the
9 support of any person. Provisions for extradition of
10 criminals not inconsistent with this article apply to the
11 demand even if the person whose surrender is demanded
12 was not in the demanding state at the time of the
13 commission of the crime and has not fled therefrom. The
14 demand, the oath, and any proceedings for extradition
15 pursuant to this section need not state or show that the
16 person whose surrender is demanded has fled from
17 justice or at the time of the commission of the crime was
18 in the demanding state.

§48A-7-6. Conditions of interstate rendition.

1 (a) Before making the demand upon the governor of
2 another state for the surrender of a person charged
3 criminally in this state with failing to provide for the
4 support of a person, the governor of this state may
5 require any children's advocate of this state to satisfy
6 him that at least sixty days prior thereto the obligee
7 initiated proceedings for support under this article or
8 that any proceeding would be of no avail.

9 (b) If, under a substantially similar reciprocal law, the
10 governor of another state makes a demand upon the
11 governor of this state for the surrender of a person
12 charged criminally in that state with failure to provide
13 for the support of a person, the governor may require
14 any children's advocate to investigate the demand and
15 to report to him whether proceedings for support have
16 been initiated or would be effective. If it appears to the
17 governor that a proceeding would be effective but has
18 not been initiated he may delay honoring the demand
19 for a reasonable time to permit the initiation of a
20 proceeding.

21 (c) If proceedings have been initiated and the person
22 demanded has prevailed therein the governor may
23 decline to honor the demand. If the obligee prevailed

24 and the person demanded is subject to a support order,
25 the governor may decline to honor the demand if the
26 person demanded is complying with the support order.

§48A-7-7. Law governing duty of support; presumption as to presence of obligor.

1 Duties of support applicable under this article are
2 those imposed under the laws of any state where the
3 obligor was present for the period during which support
4 is sought. The obligor is presumed to have been present
5 in the responding state during the period for which
6 support is sought until otherwise shown.

§48A-7-8. Remedies of state or political subdivision furnishing support.

1 If a state or a political subdivision furnishes support
2 to an individual obligee it has the same right to initiate
3 a proceeding under this article as the individual obligee
4 for the purpose of securing reimbursement for support
5 furnished and of obtaining continuing support.

§48A-7-9. How duties of support enforced.

1 All duties of support, including the duty to pay
2 arrearages, are enforceable by a proceeding under this
3 article including a proceeding for civil contempt. The
4 defense that the parties are immune to suit because of
5 their relationship as husband and wife or parent and
6 child is not available to the obligor.

§48A-7-10. Jurisdiction.

1 Jurisdiction of any proceeding under this article is
2 vested in courts of record.

§48A-7-11. Contents and filing of petition for support; venue.

1 (a) The petition or complaint shall be verified and
2 shall state the name and, so far as known to the obligee,
3 the address and circumstances of the obligor and the
4 persons for whom support is sought, and all other
5 pertinent information. The obligee may include in or
6 attach to the petition or complaint any information
7 which may help in locating or identifying the obligor

8 including a photograph of the obligor, a description of
9 any distinguishing marks on his person, other names
10 and aliases by which he has been or is known, the name
11 of his employer, his fingerprints and his social security
12 number.

13 (b) The petition or complaint may be filed in the
14 appropriate court of any state in which the obligee
15 resides. The court shall not decline or refuse to accept
16 and forward the petition or complaint on the ground
17 that it should be filed with some other court of this or
18 any other state where there is pending another action
19 for divorce, separation, annulment, dissolution, habeas
20 corpus, adoption or custody between the same parties or
21 where another court has already issued a support order
22 in some other proceedings and has retained jurisdiction
23 for its enforcement.

§48A-7-12. Children's advocate to represent obligee.

1 If this state is acting as an initiating state, the
2 children's advocate shall represent the obligee in any
3 proceedings under this article.

§48A-7-13. Petition for a minor.

1 A petition or complaint on behalf of a minor obligee
2 may be executed and filed by a person having legal
3 custody of the minor without appointment as guardian
4 ad litem.

§48A-7-14. Duty of initiating court.

1 If the initiating court finds that the petition or
2 complaint sets forth facts from which it may be
3 determined that the obligor owes a duty of support and
4 that a court of the responding state may obtain
5 jurisdiction of the obligor or his property, it shall so
6 certify and cause three copies of the petition or
7 complaint and its certificate and one copy of this article
8 to be sent to the responding court. Certification shall be
9 in accordance with the requirements of the initiating
10 state. If the name and address of the responding court
11 is unknown and the responding state has an information
12 agency comparable to that established in the initiating
13 state it shall cause the copies to be sent to the state

14 information agency or other proper official of the
15 responding state, with a request that the agency or
16 official forward them to the proper court and that the
17 court of the responding state acknowledge their receipt
18 to the initiating court.

§48A-7-15. Costs and fees.

1 An initiating court shall not require payment of either
2 a filing fee or other costs from the obligee, but may
3 request the responding court to collect fees and costs
4 from the obligor. A responding court shall not require
5 payment of a filing fee or other costs from the obligee,
6 but it may direct that all fees and costs requested by
7 the initiating court and incurred in this state when
8 acting as a responding state, including fees for filing of
9 pleadings, service of process, seizure of property,
10 stenographic or duplication service or other service
11 supplied to the obligor, be paid in whole or in part by
12 the obligor. When a circuit court in this state is the
13 responding court and has ordered that the obligor make
14 payments to the children's advocate for transmission to
15 the court in an initiating state, the children's advocate
16 shall collect from the obligor, in addition to all other fees
17 and costs, a fee equal to one percent of the payment
18 ordered to be paid by the obligor, which fee shall be
19 treated in the manner of all other fees received by the
20 children's advocate. Costs or fees do not have priority
21 over amounts due to the obligee.

§48A-7-16. Jurisdiction by arrest.

1 If a circuit court of this state believes that the obligor
2 may flee it may:

3 (1) As an initiating court, request in its certificate that
4 the responding court obtain the body of the obligor by
5 appropriate process; or

6 (2) As a responding court, obtain the body of the
7 obligor by appropriate process. Thereupon it may
8 release him upon his own recognizance or upon his
9 giving a bond in an amount set by the court to assure
10 his appearance at the hearing.

§48A-7-17. State information agency.

1 (a) The office of the child advocate office is designated
2 as the state information agency under this article. It
3 shall:

4 (1) Compile a list of the circuit courts and their
5 addresses in this state and transmit it to the state
6 information agency of every other state which has
7 adopted this or a substantially similar law. Upon the
8 adjournment of each session of the Legislature, the child
9 advocate office shall distribute copies of any amend-
10 ments to this article and a statement of their effective
11 date to all other state information agencies;

12 (2) Maintain a register of lists of courts received from
13 other states and transmit copies thereof promptly to
14 every circuit court in this state; and

15 (3) Forward to the circuit court in this state which has
16 jurisdiction over the obligor or his property petitions,
17 certificates and copies of the act it receives from courts
18 or information agencies of other states.

19 (b) If the child advocate office does not know the
20 location of the obligor or his property in the state, it
21 shall use all means at its disposal to obtain this
22 information, including the examination of official
23 records in the state and other sources such as telephone
24 directories, real property records, vital statistics
25 records, police records, requests for the name and
26 address from employers who are able or willing to
27 cooperate, records of motor vehicle license offices,
28 requests made to the tax offices, both state and federal,
29 where such offices are able to cooperate, and requests
30 made to the social security administration as permitted
31 by the social security act, as amended.

**§48A-7-18. Duty of court and officials of this state as
responding state.**

1 (a) After a circuit court of this state, acting as the
2 responding court, receives copies of the petition or
3 complaint, certificate and act from the initiating court
4 of another state, the clerk of the circuit court shall
5 docket the case and notify the children's advocate of
6 such action.

7 (b) The children's advocate shall prosecute the case
8 diligently. He or she shall take all action necessary in
9 accordance with the laws of this state to enable the court
10 to obtain jurisdiction over the obligor or his property
11 and shall request the court to set a time and place for
12 a hearing and give notice thereof to the obligor in
13 accordance with law.

§48A-7-19. Further duties of court and officials in responding state.

1 (a) The children's advocate on his or her own initiative
2 shall use all means at his or her disposal to locate the
3 obligor or his or her property, and if because of
4 inaccuracies in the petition or complaint or otherwise
5 the court cannot obtain jurisdiction, the children's
6 advocate shall inform the court of what has been done
7 and request the court to continue the case pending
8 receipt of more accurate information or an amended
9 petition or complaint from the initiating court.

10 (b) If the obligor or his or her property is not found
11 in the county, and the children's advocate discovers that
12 the obligor or his property may be found in another
13 county of this state or in another state, he shall so inform
14 the court. Thereupon, the clerk of the circuit court shall
15 forward the documents received from the court in the
16 initiating state to a circuit court in the other county or
17 to a court in the other state or to the information agency
18 or other proper official of the other state with a request
19 that the documents be forwarded to the proper court.
20 All powers and duties provided by this article apply to
21 the recipient of the documents so forwarded. If the clerk
22 of a circuit court of this state forwards documents to
23 another court, he or she shall forthwith notify the
24 initiating court.

25 (c) If the children's advocate has no information as to
26 the location of the obligor or his or her property, he or
27 she shall so inform the initiating court.

§48A-7-20. Hearing and continuance.

1 If the obligee is not present at the hearing and the
2 obligor denies owing the duty of support alleged in the

3 petition or offers evidence constituting a defense, the
4 court shall upon request of either party, continue the
5 hearing to permit evidence relative to the duty to be
6 adduced by either party by deposition or by appearing
7 in person before the court. The court may designate the
8 judge of the initiating court as a person before whom
9 a deposition may be taken.

§48A-7-21. Evidence of husband and wife.

1 Laws attaching a privilege against the disclosure of
2 communications between husband and wife are inappli-
3 cable to proceedings under this article. Husband and
4 wife are competent witnesses and may be compelled to
5 testify to any relevant matter, including marriage and
6 parentage.

§48A-7-22. Rules of evidence.

1 In any hearing for the civil enforcement of this article,
2 the court is governed by the rules of evidence applicable
3 in a civil action in a court of record. If the action is
4 based on a support order issued by another court of
5 competent jurisdiction a certified copy of the order shall
6 be received as evidence of the duty of support, subject
7 only to any defenses available to an obligor with respect
8 to paternity or to a defendant in an action or a
9 proceeding to enforce a foreign money judgment. The
10 determination or enforcement of a duty of support owed
11 to one obligee is unaffected by any interference by
12 another obligee with rights of custody or visitation
13 granted by a court.

§48A-7-23. Order of support.

1 If the circuit court, acting as a responding court, finds
2 a duty of support, it may order the obligor to furnish
3 support or reimbursement therefor and subject the
4 property of the obligor to the order. Support orders
5 made pursuant to this article shall require that pay-
6 ments be made to the child advocate office. The court
7 and children's advocate of any county in which the
8 obligor is present or has property have the same powers
9 and duties to enforce the order as have those of the
10 county in which it was first issued. If enforcement is

11 impossible or cannot be completed in the county in
12 which the order was issued, the children's advocate shall
13 send a certified copy of the order to the children's
14 advocate of any county in which it appears that
15 proceedings to enforce the order would be effective. The
16 children's advocate to whom the certified copy of the
17 order is forwarded shall proceed with enforcement and
18 report the results of the proceedings to the court first
19 issuing the order.

§48A-7-24. Responding court to transmit copies to initiating court.

1 The circuit court, acting as a responding court, shall
2 cause a copy of all support orders to be sent to the
3 initiating court.

§48A-7-25. Additional powers of responding court.

1 In addition to the foregoing powers, a circuit court,
2 acting as responding court, may subject the obligor to
3 any terms and conditions proper to assure compliance
4 with its orders and in particular to:

5 (1) Require the obligor to furnish a cash deposit or a
6 bond of a character and amount to assure payment of
7 any amount due;

8 (2) Require the obligor to report personally and to
9 make payments at specified intervals to the children's
10 advocate; and

11 (3) Punish under the power of contempt the obligor
12 who violates any order of the court.

§48A-7-26. Adjudication of issue of paternity.

1 If the obligor asserts as a defense that he is not the
2 father of the child for whom support is sought and it
3 appears to the court that the defense is not frivolous, and
4 if both of the parties are present at the hearing or the
5 proof required in the case indicates that the presence of
6 either or both of the parties is not necessary, the court
7 may adjudicate the paternity issue. Otherwise the court
8 may adjourn the hearing until the paternity issue has
9 been adjudicated.

§48A-7-27. Additional duties of responding court.

1 A circuit court, acting as a responding court, has the
2 following duties which shall be carried out through the
3 children's advocate:

4 (1) To transmit to the initiating court any payment
5 made by the obligor pursuant to any order of the court
6 or otherwise; and

7 (2) To furnish to the initiating court upon request a
8 certified statement of all payments made by the obligor.

§48A-7-28. Additional duty of initiating court.

1 A circuit court, acting as an initiating court, shall
2 receive and disburse forthwith all payments made by
3 the obligor or sent by the responding court. This duty
4 shall be carried out through the child advocate office.

§48A-7-29. Proceedings not to be stayed because of pending or prior action; support order pendente lite.

1 A circuit court, acting as a responding court, shall not
2 stay the proceeding or refuse a hearing under this
3 article because of any pending or prior action or
4 proceeding for divorce, separation, annulment, dissolu-
5 tion, habeas corpus, adoption or custody in this or any
6 other state. The court shall hold a hearing and may issue
7 a support order pendente lite. In aid thereof it may
8 require the obligor to give a bond for the prompt
9 prosecution of the pending proceeding. If the other
10 action or proceeding is concluded before the hearing in
11 the instant proceeding and the judgment therein
12 provides for the support demanded in the petition or
13 complaint being heard the court must conform its
14 support order to the amount allowed in the other action
15 or proceeding. Thereafter the court shall not stay
16 enforcement of its support order because of the retention
17 of jurisdiction for enforcement purposes by the court in
18 the other action or proceeding.

§48A-7-30. Effect of participation in proceeding.

1 Participation in any proceeding under this article does
2 not confer jurisdiction upon any court over any of the

3 parties thereto in any other proceeding.

§48A-7-31. Application of article where obligee and obligor are in different counties in this state.

1 This article applies if both the obligee and the obligor
2 are in this state but in different counties. If the circuit
3 court of the county in which the petition or complaint
4 is filed finds that the petition or complaint sets forth
5 facts from which it may be determined that the obligor
6 owes a duty of support and finds that a circuit court of
7 another county in this state may obtain jurisdiction over
8 the obligor or his property, the clerk of the court shall
9 send the petition or complaint and a certification of the
10 findings to the circuit court of the county in which the
11 obligor or his property is found. The clerk of the court
12 of the county receiving these documents shall notify the
13 children's advocate of their receipt. The children's
14 advocate and the circuit court in the county in which
15 the copies are forwarded then shall have duties corres-
16 ponding to those imposed upon them when acting for
17 this state as a responding state.

§48A-7-32. Appeals.

1 If the attorney general is of the opinion that a support
2 order is erroneous and presents a question of law
3 warranting an appeal in the public interest, he may:

4 (a) Perfect an appeal to the supreme court of appeals
5 if the support order was issued by a circuit court of this
6 state; or

7 (b) If the support order was issued in another state,
8 cause the appeal to be taken in the other state. In either
9 case expenses of appeal may be paid on his order from
10 funds appropriated for his office.

§48A-7-33. Additional remedies for enforcement of foreign support order.

1 If the duty of support is based on a foreign support
2 order, the obligee has the additional remedies provided
3 in sections thirty-four through thirty-eight of this
4 article.

§48A-7-34. Registration of foreign support order.

1 The obligee may register the foreign support order in
2 a court of this state in the manner, with the effect, and
3 for the purposes herein provided.

§48A-7-35. Clerk to maintain registry of foreign support orders.

1 The clerk of the court shall maintain a registry of
2 foreign support orders in which he shall file foreign
3 support orders.

§48A-7-36. Children's advocate to represent obligee.

1 If this state is acting either as a rendering or a
2 registering state the children's advocate shall represent
3 the obligee in proceedings under sections thirty-three
4 through thirty-eight of this article.

§48A-7-37. Registration procedure; notice; children's advocate to enforce order.

1 (a) An obligee seeking to register a foreign support
2 order in a court of this state shall transmit to the clerk
3 of the court (1) three certified copies of the order with
4 all modifications thereof, (2) one copy of the reciprocal
5 enforcement of support law of the state in which the
6 order was made, and (3) a statement verified and signed
7 by the obligee, showing the post-office address of the
8 obligee, the last known place of residence and post-office
9 address of the obligor, the amount of support remaining
10 unpaid, a description and the location of any property
11 of the obligor available upon execution, and a list of the
12 states in which the order is registered. Upon receipt of
13 these documents the clerk of the court, without payment
14 of a filing fee or other cost to the obligee, shall file them
15 in the registry of foreign support orders. The filing
16 constitutes registration under this article.

17 (b) Promptly upon registration the clerk of the court
18 shall send by certified or registered mail to the obligor
19 at the address given a notice of the registration with a
20 copy of the registered support order and the post-office
21 address of the obligee. He shall also docket the case and
22 notify the children's advocate of his action. The child-

23 ren's advocate shall proceed diligently to enforce the
24 order.

§48A-7-38. Effect of registration; enforcement procedure.

1 (a) Upon registration, the registered foreign support
2 order shall be treated in the same manner as a support
3 order issued by a circuit court of this state. It has the
4 same effect and is subject to the same procedures,
5 defenses and proceedings for reopening, vacating or
6 staying as a support order of this state and may be
7 enforced and satisfied in like manner.

8 (b) The obligor has twenty days after the mailing of
9 notice of the registration in which to petition the court
10 to vacate the registration or for other relief. If he does
11 not so petition the registered support order is confirmed.

12 (c) At the hearing to enforce the registered support
13 order the obligor may present only matters that would
14 be available to him as defenses in an action to enforce
15 a foreign money judgment. If he shows to the court that
16 an appeal from the order is pending or will be taken
17 or that a stay of execution has been granted, the court
18 shall stay enforcement of the order until the appeal is
19 concluded, the time for appeal has expired, or the order
20 is vacated, upon satisfactory proof that the obligor has
21 furnished security for payment of the support ordered
22 as required by the rendering state. If he shows to the
23 court any ground upon which enforcement of a support
24 order of this state may be stayed the court shall stay
25 enforcement of the order for an appropriate period if the
26 obligor furnishes the same security for payment of the
27 support ordered that is required for a support order of
28 this state.

§48A-7-39. Uniformity of interpretation.

1 This article shall be so construed as to effectuate its
2 general purpose to make uniform the law of those states
3 which enact a substantially similar law.

§48A-7-40. Short title.

1 This article may be cited as the "Revised Uniform

2 Reciprocal Enforcement of Support Act.”

§48A-7-41. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or applications
4 of this article, and to this end the provisions of this
5 article are severable.

CHAPTER 43

(S. B. 61—By Senator Tucker)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c, relating to child welfare; authorizing department of human services to enter into interstate adoption assistance compacts; legislative findings and purpose; definitions; contents of compacts; medical assistance under compacts; and felony penalty for submitting false, misleading or fraudulent claims for payment or reimbursement for services or benefits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INTERSTATE ADOPTION ASSISTANCE COMPACT.

- §49-2C-1. Interstate adoption assistance compact—Findings and purpose.
§49-2C-2. Interstate adoption assistance compact authorized; definitions.
§49-2C-3. Interstate adoption assistance compact—Contents of compact.
§49-2C-4. Same—Medical assistance.

§49-2C-1. Interstate adoption assistance compact — Findings and purpose.

- 1 (a) The Legislature finds that:
2 (1) Finding adoptive families for children, for whom

3 state assistance is desirable pursuant to section seventeen,
4 article two of this chapter and assuring the protection of the
5 interests of the children affected during the entire
6 assistance period, require special measures when the
7 adoptive parents move to other states or are residents of
8 another state; and

9 (2) Provision of medical and other necessary services for
10 children, with state assistance, encounters special
11 difficulties when the provision of services takes place in
12 other states.

13 (b) The purposes of sections one through four of this
14 article are to:

15 (1) Authorize the department of human services to enter
16 into interstate agreements with agencies of other states for
17 the protection of children on behalf of whom adoption
18 assistance is being provided by the department of human
19 services.

20 (2) Provide procedures for interstate children's
21 adoption assistance payments, including medical
22 payments.

**§49-2C-2. Interstate adoption assistance compacts authorized;
definitions.**

1 (a) The department of human services is authorized to
2 develop, participate in the development of, negotiate and
3 enter into one or more interstate compacts on behalf of this
4 state with other states to implement one or more of the
5 purposes set forth in sections one through four of this
6 article. When so entered into, and for so long as it shall
7 remain in force, such a compact shall have the force and
8 effect of law.

9 (b) For the purposes of sections one through four of this
10 article, the term "state" means a state of the United States,
11 the District of Columbia, the Commonwealth of Puerto
12 Rico, the Virgin Islands, Guam, the Commonwealth of the
13 Northern Mariana Islands, or a Territory or Possession of or
14 administered by the United States.

15 (c) For the purposes of sections one through four of this
16 article, the term "adoption assistance state" means the state
17 that is signatory to an adoption assistance agreement in a
18 particular case.

19 (d) For the purposes of sections one through four of this

20 article, the term "residence state" means the state of which
21 the child is a resident by virtue of the residence of the
22 adoptive parents.

§49-2C-3. Interstate adoption assistance compact — Contents of compact.

1 A compact entered into pursuant to the authority
2 conferred by sections one through four of this article shall
3 have the following content:

4 (1) A provision making it available to joinder by all
5 states.

6 (2) A provision or provisions for withdrawal from the
7 compact upon written notice to the parties, but with a
8 period of one year between the date of the notice and the
9 effective date of the withdrawal.

10 (3) A requirement that the protections afforded by or
11 pursuant to the compact continue in force for the duration
12 of the adoption assistance and be applicable to all children
13 and their adoptive parents who on the effective date of the
14 withdrawal are receiving adoption assistance from a party
15 state other than the one in which they are resident and have
16 their principal place of abode.

17 (4) A requirement that each instance of adoption
18 assistance to which the compact applies be covered by an
19 adoption assistance agreement in writing between the
20 adoptive parents and the state child welfare agency of the
21 state which undertakes to provide the adoption assistance,
22 and further, that any such agreement be expressly for the
23 benefit of the adopted child and enforceable by the adoptive
24 parents, and the state agency providing the adoption
25 assistance.

26 (5) Such other provisions as may be appropriate to
27 implement the proper administration of the compact.

§49-2C-4. Same—Medical assistance.

1 (a) A child with special needs resident in this state who
2 is the subject of an adoption assistance agreement with
3 another state shall be entitled to receive a medical
4 assistance identification from this state upon the filing in
5 the department of human services of a certified copy of the
6 adoption assistance agreement obtained from the adoption
7 assistance state. In accordance with regulations of the

8 department of human services the adoptive parents shall be
9 required at least annually to show that the agreement is still
10 in force or has been renewed.

11 (b) The department of human services shall consider the
12 holder of a medical assistance identification pursuant to
13 this section as any other holder of a medical assistance
14 identification under the laws of this state and shall process
15 and make payment on claims on account of such holder in
16 the same manner and pursuant to the same conditions and
17 procedures as for other recipients of medical assistance.

18 (c) The department of human services shall provide
19 coverage and benefits for a child who is in another state and
20 who is covered by an adoption assistance agreement made
21 by the department of human services for the coverage or
22 benefits, if any, not provided by the residence state. To this
23 end, the adoptive parents acting for the child may submit
24 evidence of payment for services or benefit amounts not
25 payable in the residence state and shall be reimbursed
26 therefor. However, there shall be no reimbursement for
27 services or benefit amounts covered under any insurance or
28 other third party medical contract or arrangement held by
29 the child or the adoptive parents. The department of human
30 services shall make regulations implementing this section.
31 The additional coverages and benefit amounts provided
32 pursuant to this section shall be for services to the cost of
33 which there is no federal contribution, or which, if federally
34 aided, are not provided by the residence state. Among other
35 things, such regulations shall include procedures to be
36 followed in obtaining prior approvals for services in those
37 instances where required for the assistance.

38 (d) Any person who submits a claim for payment or
39 reimbursement for services or benefits pursuant to this
40 section or the making of any statement in connection
41 therewith, which claim of statement the maker knows or
42 should know to be false, misleading or fraudulent is guilty
43 of a felony, and, upon conviction thereof, shall be fined not
44 more than ten thousand dollars, or imprisoned in the
45 penitentiary not more than two years, or both fined and
46 imprisoned.

47 (e) The provisions of this section shall apply only to
48 medical assistance for children under adoption assistance
49 agreements from states that have entered into a compact

50 with this state under which the other state provides medical
51 assistance to children with special needs under adoption
52 assistance agreements made by this state. All other children
53 entitled to medical assistance pursuant to adoption
54 assistance agreements entered into by this state shall be
55 eligible to receive it in accordance with the laws and
56 procedures applicable thereto.

CHAPTER 44

(Com. Sub. for S. B. 333—By Senators Tucker, Whitlow and Holliday)

[Passed February 10, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to civil service system; increasing the time a job opening must be posted from five days prior to filling the job to ten working days prior to filling the job.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article six, 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 6. CIVIL SERVICE SYSTEM.

§29-6-24. Posting of job openings.

1 Whenever a job opening occurs within the classified
2 service, the appointing authority shall, in addition to any
3 other requirement of law or regulation for the posting of
4 job opening notices, at least ten working days before
5 making an appointment to fill the job opening, post a
6 notice within the building or facility where the duties of
7 the job will be performed and throughout the agency,
8 which notice states that a job opening has occurred and
9 describes the duties to be performed by a person employed
10 in that position.

CHAPTER 45

(H. B. 1960—By Delegate Murensky and Delegate Wells)

[Passed March 8, 1986; 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 alcohol beverage control commissioner; attorney general; board of physical therapy; board of probation and parole; board of regents; department of agriculture—state soil conservation committee; department of banking; department of corrections; department of education; department of employment security; department of energy; department of finance and administration; department of health; department of health—office of the chief medical examiner; department of highways; department of human services; department of labor; department of natural resources; department of public safety; department of veterans affairs; division of vocational rehabilitation; health care cost review authority; human rights commission; library commission; public employees insurance board; railroad maintenance authority; supreme court of appeals; tax department; state commission on aging; and treasurer, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact
2 and recommendations reported to it by the court of
3 claims concerning various claims against the state and
4 agencies thereof, and in respect to each of the following
5 claims the Legislature adopts those findings of fact as
6 its own, and hereby declares it to be the moral obligation
7 of the state to pay each such claim in the amount

8 specified below, and directs the auditor to issue
 9 warrants for the payment thereof out of any fund
 10 appropriated and available for the purpose.

11

12 (a) *Claims against the Alcohol Beverage*
 13 *Control Commission:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

15	(1) The Chesapeake and Potomac Tele-	
16	phone Company of West Virginia ..\$	608.11
17	(2) Tony L. LaNeve.....\$	112.20

18

19 (b) *Claim against the Attorney General:*

20 (TO BE PAID FROM GENERAL REVENUE FUND)

21	(1) F & M Supply Company, Inc.\$	78.47
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22

23 (c) *Claim against the Board*
 24 *of Physical Therapy:*

25 (TO BE PAID FROM SPECIAL REVENUE FUND)

26	(1) Louise C. Christensen\$	9,000.00
27	from Acct. No. 8490-06	

28

29 (d) *Claims against the Board of*
 30 *Probation and Parole:*

31 (TO BE PAID FROM GENERAL REVENUE FUND)

32	(1) John A. Bailes\$	52.00
33	(2) C. Frank LePage.....\$	52.00

34

35 (e) *Claims against the Board of Regents:*

36 (TO BE PAID FROM SPECIAL REVENUE FUND)

37	(1) Lucy Kathleen Gardner\$	210.31
38	from Acct. No. 8633-06	
39	(2) Laura L. Michael\$	60.00
40	from Acct. No. 9280-00	

41

42 (f) *Claim against the Department of Agriculture*
 43 *State Soil Conservation Committee:*

44 (TO BE PAID FROM GENERAL REVENUE FUND)

45	(1) William K. Bunner	\$ 1,468.20
46		
47	(g) <i>Claim against the Department of Banking:</i>	
48	(TO BE PAID FROM SPECIAL REVENUE FUND)	
49	(1) F & M Supply Company, Inc.	\$ 346.28
50	from Acct. No. 8395	
51		
52	(h) <i>Claims against the Department of Corrections:</i>	
53	(TO BE PAID FROM GENERAL REVENUE FUND)	
54	(1) A & W Sanitation Service	\$ 10.00
55	(2) Exxon Company, U.S.A.	\$ 273.88
56	(3) FCI Alderson	\$ 7,528.91
57	(4) FCI Alderson	\$ 2,585.52
58	(5) Firestone Tire & Rubber Co.	\$ 245.84
59	(6) Constance Kesner, as Administratrix	
60	of the Estate of Philip S.	
61	Kesner, deceased	\$154,307.84
62	(7) Constance Kesner, Individually	\$ 50,000.00
63	(8) Roentgen Diagnostics, Inc.	\$ 47.00
64		
65	(i) <i>Claims against the Department of Education:</i>	
66	(TO BE PAID FROM GENERAL REVENUE FUND)	
67	(1) Charleston Acoustics	\$ 8,257.00
68	(2) James T. Kauffman	\$ 155.00
69	(3) P.J.S. & Associates	\$ 1,430.00
70	(4) Stephanie L. Poole	\$ 434.00
71	(5) Richard N. Schnacke	\$ 245.25
72	(j) <i>Claims against the Department of</i>	
73	<i>Employment Security:</i>	
74	(TO BE PAID FROM SPECIAL REVENUE FUND)	
75	from Acct. No. 8250	
76	(1) C & P Telephone Co. of W. Va.	\$ 362.90
77	(2) Katherine L. Hart	\$ 2,030.00
78	(3) Joe L. Smith, Jr., Inc. d/b/a	
79	Biggs-Johnston-Withrow	\$ 3,354.44
80		
81	(k) <i>Claim against the Department of Energy:</i>	
82	(TO BE PAID FROM GENERAL REVENUE FUND)	

83	(1) Xerox Corporation	\$ 232.63
84		
85	(l) <i>Claim against the Department of</i>	
86	<i>Finance & Administration:</i>	
87	(TO BE PAID FROM GENERAL REVENUE FUND)	
88	(1) Avery International Corporation	\$ 138.00
89		
90	(m) <i>Claims against the Department of Health:</i>	
91	(TO BE PAID FROM GENERAL REVENUE FUND)	
92	(1) Sharon Ambrose	\$ 480.00
93	(2) Seymore Bailes, d/b/a	
94	Weintrob Brothers	\$ 597.82
95	(3) Beatrice Dairy Products	
96	Division of Beatrice Companies,	
97	Inc., d/b/a Meadow Gold Dairy	\$ 443.24
98	(4) C & P Telephone Co. of W. Va.	\$ 16,626.65
99	(5) Ronald J. Crisp	\$ 1,000.00
100	(6) General Telephone Company of SE ...	\$ 278.06
101	(7) Global Equipment Company	\$ 1,331.98
102	(8) The Goodyear Tire &	
103	Rubber Company	\$ 210.80
104	(9) Ray A. Harron	\$ 923.20
105	(10) Hellige, Inc.	\$ 122.93
106	(11) Harry H. Ko, M. D.,	
107	d/b/a Calhoun Radiology	
108	Association, Inc.	\$ 624.00
109	(12) James P. Mylott	\$ 523.37
110	(13) Otis Elevator Company	\$ 4,990.67
111	(14) Pitney Bowes, Inc.	\$ 1,952.15
112	(15) R. J. Carey Company, Inc.	\$ 2,290.00
113	(16) Roane County Family Health Care ...	\$ 102.00
114	(17) St. Mary's Hospital	\$ 84,738.50
115	(18) Standard Laboratories, Inc.	\$ 182.00
116	(19) Telemed Division—	
117	Hays Medical, Inc.	\$ 438.15
118	(20) Uniforms Manufacturing Company ...	\$ 2,360.88
119	(21) WVU Dental Corporation	\$ 317.00
120	(22) Webnic Construction Services Inc. ...	\$ 624.70
121		
122	(n) <i>Claim against the Department of Health—</i>	

123 *Office of the Chief Medical Examiner:*

124 (TO BE PAID FROM GENERAL REVENUE FUND)

125 (1) Taylor County Emergency Squad . . . \$ 35.00

126

127 (o) *Claims against the Department of Highways:*

128 (TO BE PAID FROM STATE ROAD FUND)

129 (1) Carl M. Geupel Construction
 130 Company, Inc. \$221,855.29

131 (2) Jimmie A. Currence and
 132 Eula R. Currence \$134,027.08

133 (3) Loren Currence and Rella Currence . . \$ 12,994.19

134 (4) Carl A. Daniels \$ 9,450.00

135 (5) Walter J. Davis \$ 246.75

136 (6) Thelma L. Jamison \$ 2,500.00

137 (7) Nina G. Jones \$ 17,500.00

138 (8) Alia J. Karras \$ 307.12

139 (9) Tommy C. Miller \$ 216.55

140 (10) Jack McMillan and Vera McMillan . . \$ 267.00

141 (11) W. B. Swope \$ 6,211.76

142 (12) O. L. Westfall and Rebecca Westfall . . \$ 42,500.00

143 (13) Yeager, Incorporated \$136,211.00

144

145 (p) *Claim against the Department of*
 146 *Human Services:*

147 (TO BE PAID FROM GENERAL REVENUE FUND)

148 (1) F & M Supply Company, Inc. \$ 122.00

149

150 (q) *Claim against the Department of Labor:*

151 (TO BE PAID FROM GENERAL REVENUE FUND)

152 (1) Firestone Tire & Rubber Co. \$ 40.42

153

154 (r) *Claim against the Department of*
 155 *Natural Resources:*

156 (TO BE PAID FROM SPECIAL REVENUE FUND)

157 (1) Moore Business Forms, Inc. \$ 2,354.90
 158 from Acct. No. 8300

159

160 (s) *Claims against the Department of Public Safety:*

161 (TO BE PAID FROM GENERAL REVENUE FUND)

162	(1) City of Moundsville	\$ 283.48
163	(2) Fisher Scientific	\$ 32.98
164	(3) Gail Phillips	\$ 918.00
165	(4) Sverdrup & Parcel and	
166	Associates, Inc.	\$ 7,328.82

168 (t) *Claim against the Department of*
169 *Veterans Affairs:*

170 (TO BE PAID FROM GENERAL REVENUE FUND)

171	(1) Fire Chief Fire Extinguisher Co.	\$ 22.26
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173 (u) *Claims against the Division of*
174 *Vocational Rehabilitation:*

175 (TO BE PAID FROM FEDERAL FUND)

176 from Acct. No. 7873

177	(1) C & O Motors	\$ 217.26
178	(2) Conoco, Inc.	\$ 91.20
179	(3) Contract Business Interiors	\$ 317.40
180	(4) Hewlett Packard Company	\$ 2,670.50
181	(5) Huntington Ear Clinic, Inc.	\$ 269.00
182	(6) J. W. Allen & Company	\$ 267.35
183	(7) Judy's Locksmiths, Inc.	\$ 2,469.15
184	(8) Midwest Corporation/Capitol	
185	Restaurant Equipment Co.	\$ 5,793.00
186	(9) Mountaineer Gas Company	\$ 23.69
187	(10) National Audio Company, Inc.	\$ 166.90
188	(11) Ohio Valley Office Equipment	\$ 174.08
189	(12) Patterson Dental Company	\$ 115.36
190	(13) Ricoh Corporation	\$ 416.72
191	(14) Clayburn Salisbury and	
192	Frank W. Salisbury	\$ 96.00
193	(15) Stuart Drug & Surgical Supply	\$ 48.95

195 (v) *Claim against the Health Care*
196 *Cost Review Authority:*

197 (TO BE PAID FROM SPECIAL REVENUE FUND)

368	CLAIMS	[Ch. 45
198	(1) Manpower Temporary Services \$	227.80
199	from Acct. No. 8564	
200		
201	(w) <i>Claim against the Human Rights Commission:</i>	
202	(TO BE PAID FROM GENERAL REVENUE FUND)	
203	(1) Matthew Bender & Company \$	134.50
204		
205	(x) <i>Claim against the Library Commission:</i>	
206	(TO BE PAID FROM GENERAL REVENUE FUND)	
207	(1) C & P Telephone Co. of W. Va. \$	959.90
208		
209	(y) <i>Claims against the Public Employees</i>	
210	<i>Insurance Board:</i>	
211	(TO BE PAID FROM GENERAL REVENUE FUND)	
212	(1) James Leonard Fortune \$	861.00
213	(2) Robert H. Johnston \$	1,093.04
214		
215	(z) <i>Claim against the Railroad</i>	
216	<i>Maintenance Authority:</i>	
217	(TO BE PAID FROM GENERAL REVENUE FUND)	
218	(1) Karl D. Myers \$	62.56
219		
220	(aa) <i>Claim against the State Commission</i>	
221	<i>on Aging:</i>	
222	(TO BE PAID FROM GENERAL REVENUE FUND)	
223	(1) Moore Business Forms &	
224	Systems Division \$	874.10
225		
226	(bb) <i>Claims against the Supreme Court of Appeals:</i>	
227	(TO BE PAID FROM GENERAL REVENUE FUND)	
228	(1) BJW Printers \$	205.00
229	(2) Kanawha County Commission \$	1,022.76
230		
231	(cc) <i>Claim against the Tax Department:</i>	
232	(TO BE PAID FROM GENERAL REVENUE FUND)	

233 (1) C & P Telephone Co. of W. Va. \$ 3,305.43

234

235 (dd) *Claims against the Treasurer:*

236

237

(TO BE PAID FROM TREASURER'S ACCOUNT NO. 1600,
FROM APPROPRIATION FOR CURRENT FISCAL YEAR 1985-86)

238 (1) A & I Company \$ 15,106.00

239 (2) Ostrin Electric Company \$ 1,305.81

240 The Legislature finds that the above moral obligations
241 and the appropriations made in satisfaction thereof shall
242 be the full compensation for all claimants, and that prior
243 to the payments to any claimant provided for in this bill,
244 the court of claims shall receive a release from said
245 claimant releasing any and all claims for moral
246 obligations arising from the matters considered by the
247 Legislature in the finding of the moral obligations and
248 the making of the appropriations for said claimant. The
249 court of claims shall deliver all releases obtained from
250 claimants to the department against which the claim
251 was allowed.

CHAPTER 46

(H. B. 1961—By Delegate Murenky and Delegate Wells)

[Passed March 8, 1986; 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 secretary of state and the tax department to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact

2 that the state has received the benefit of the commod-
 3 ities and services rendered by certain claimants herein
 4 and has considered claims against the state, the board
 5 of regents and the secretary of state, agencies thereof,
 6 which have arisen due to over-expenditures of the
 7 departmental appropriations by officers of such state
 8 spending unit, such claims having been previously
 9 considered by the court of claims which also found that
 10 the state has received the benefit of the commodities and
 11 services rendered by each claimant, but were denied by
 12 the court of claims on the purely statutory grounds that
 13 to allow such claims would be condoning illegal acts
 14 contrary to the laws of the state. The Legislature
 15 pursuant to its findings of fact and also by the adoption
 16 of the findings of fact by the court of claims as its own,
 17 and, while not condoning such illegal acts, hereby
 18 declares it to be the moral obligation of the state to pay
 19 each such claim in the amount specified below, and
 20 directs the auditor to issue warrants upon receipt of a
 21 properly executed requisition supported by an itemized
 22 invoice, statement or other satisfactory document as
 23 required by section ten, article three, chapter twelve of
 24 the code of West Virginia, one thousand nine hundred
 25 thirty-one, as amended, for the payment thereof out of
 26 any fund appropriated and available for the purpose.

27 (a) *Claim against the Board of Regents:*

28 (TO BE PAID FROM GENERAL REVENUE)

29	(1) Mountaineer Gas Co.	\$	126.68
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30 (b) *Claims against the Secretary of State:*

31 (TO BE PAID FROM GENERAL REVENUE)

32	(1) C & P Telephone Co. of W. Va.	\$	12,012.66
33	(2) The S. Spencer Moore Company	\$	222.64

34 (c) *Claim against the Tax Department:*

35 (TO BE PAID FROM GENERAL REVENUE)

36	(1) B-K Dynamics, Inc.	\$	237,235.77
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CHAPTER 47

(H. B. 1871—By Delegate Murensky and Delegate Wells)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia 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:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by
3 the court of claims in respect to the following named
4 claimants who were innocent victims of crime within
5 this state and entitled to compensation; and in respect
6 to each of such named claimants the Legislature adopts
7 those findings of fact as its own, hereby declares it to
8 be the moral obligation of the state to pay each such
9 claimant in the amount specified below, and directs the
10 auditor to issue warrants for the payment thereof out
11 of any fund appropriated and available for the purpose.

12 *Claims for crime victims compensation awards:*

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14	(1) Allen, Anna M.	\$	1,250.00
15	(2) Allen, Anna M., guardian of Harold William Mullins.....	\$	18,750.00
16	(3) Arbuckle, Ramona S.	\$	668.85
17	(4) Bailey, Janice M.	\$	307.80
18	(5) Blankenship, David.....	\$	20,000.00
19	(6) Blankenship, Loretta M.	\$	3,006.46
20	(7) Boothe, Beulah G.	\$	330.00
21	(8) Brown, Hazel W.	\$	6,448.09
22	(9) Cantrell, Allen D.....	\$	157.06
23			

24	(10) Carver, Freddy K., Sr.	\$ 2,034.50
25	(11) Coduto, Linda M.	\$ 535.11
26	(12) Coleman, Verlan K.	\$ 3,843.10
27	(13) Compton, Sheree J.	\$ 510.25
28	(14) Cox, Debbie J.	\$ 11,983.31
29	(15) Crites, Larry W.	\$ 10,409.01
30	(16) Cunningham, David W.	\$ 8,754.60
31	(17) Dolan, Patricia Ann	\$ 149.40
32	(18) Erdman, Elizabeth A.	\$ 20,000.00
33	(19) Farley, Anna G.	\$ 1,250.00
34	(20) Forster, Kevin L.	\$ 20,000.00
35	(21) Foster, Glendeen R.	\$ 50,000.00
36	(22) Gardner, Anita G.	\$ 455.90
37	(23) Glover, Sheila R.	\$ 5,269.49
38	(24) Griffith, Thomas L.	\$ 7,237.90
39	(25) Grove, David M.	\$ 140.00
40	(26) Harvey, Bruce W.	\$ 257.50
41	(27) Hostetler, Kenneth L.	\$ 20,000.00
42	(28) Hutchison, James N.	\$ 8,819.22
43	(29) Johnston, John H.	\$ 401.40
44	(30) Krafft, Julia E.	\$ 346.20
45	(31) Lacy, Richard Adam.	\$ 456.09
46	(32) Lockhart, Darrell Tracy	\$ 511.00
47	(33) Maiolo, Joe H.	\$ 65.00
48	(34) Martin, Melba P.	\$ 1,250.00
49	(35) McGucken, Mary L.	\$ 4,793.06
50	(36) Miller, Mike E.	\$ 20,000.00
51	(37) Mills, David A.	\$ 20,000.00
52	(38) Moore, Randall S.	\$ 1,295.90
53	(39) Morrison, Luna G.	\$ 7,464.57
54	(40) Muncy, Evert J.	\$ 7,234.40
55	(41) Parsons, Patricia M.	\$ 20,000.00
56	(42) Prasatek, John A.	\$ 3,334.24
57	(43) Rankin, James D.	\$ 809.77
58	(44) Rhodes, Linda L.	\$ 290.00
59	(45) Ridenour, Clarence R.	\$ 1,088.05
60	(46) Riggs, Dorothy Sue	\$ 3,401.03
61	(47) Rohal, Michael J.	\$ 147.57
62	(48) Rutherford, Thomas J.	\$ 167.66
63	(49) Short, Ronald W.	\$ 7,504.60
64	(50) Sizemore, Palma D.	\$ 20,000.00
65	(51) Stiltner, Verdie P.	\$ 323.58

66	(52)	Taylor, Sheila L.....	\$ 1,757.73
67	(53)	Thompson, Kenneth L.....	\$ 8,875.46
68	(54)	Tomblin, Bernard F.....	\$ 350.00
69	(55)	Tyree, Carolyn L.....	\$ 10,000.00
70	(56)	Tyree, Helen M.	\$ 5,000.00
71	(57)	Tyree, Kimberly K.....	\$ 5,000.00
72	(58)	Williams, Charles O.....	\$ 7,046.30
73	(59)	Williams, David J.....	\$ 1,069.49
74	(60)	Wimmer, Clifford E., Sr.....	\$ 100.00
75	(61)	Wimmer, Virginia.....	\$ 174.60
76	(62)	Zirkle, Teddy D.....	\$ 8,705.81
77	(63)	Bibey, Cletis T., Jr.	\$ 2,277.54
78	(64)	Calhoun, Doris J., guardian of	
79		Kenneth L. Lawson.....	\$ 50,000.00
80	(65)	Freeman, Georgianna.....	\$ 2,256.00
81	(66)	Garrett, Delores J.....	\$ 438.00
82	(67)	Hall, Robert T.	\$ 802.65
83	(68)	Holt, Martha, guardian of	
84		Clayton C. Jackson, III.....	\$ 6,666.67
85	(69)	Holt, Martha, guardian of	
86		Dawnielle C. Jackson.....	\$ 6,666.67
87	(70)	Lee, Jack V.....	\$ 3,527.35
88	(71)	Meneely, Diane.....	\$ 2,820.00
89	(72)	Moore, Jeffery L.	\$ 779.20
90	(73)	Morton, Bobbie H.....	\$ 195.00
91	(74)	Musick, Frances D.....	\$ 9,375.00
92	(75)	Musick, Frances D., guardian of	
93		George Edward Musick.....	\$ 4,687.50
94	(76)	O'Brian, Virginia B.	\$ 810.21
95	(77)	Payne, Joan C., guardian of	
96		Selena C. Jackson.....	\$ 6,666.66
97	(78)	Phillips, Ann P., Assistant	
98		Trust Officer, The McDowell	
99		County National Bank,	
100		Guardian of the Estate of	
101		Roy Williams, a minor.....	\$ 6,666.67
102	(79)	Phillips, Ann P., Assistant	
103		Trust Officer, The McDowell	
104		County National Bank,	
105		Guardian of the Estate of	
106		Johnny Dash, a minor.....	\$ 6,666.67
107	(80)	Phillips, Ann P., Assistant	

108	Trust Officer, The McDowell	
109	County National Bank,	
110	Guardian of the Estate of	
111	Kimberly Bolen, a minor	\$ 6,666.66
112	(81) Stone, Gary K.....	\$ 434.50
113	(82) Taylor, Roy F., Jr.	\$ 250.00
114	(83) Walker, Bobby S.....	\$ 10,636.67
115	(84) Watson, James L.....	\$ 772.67
116	(85) Withrow, Wendell B., II.....	\$ 3,378.15
117	(86) Workman, Brenda S.	\$ 4,506.75
118	TOTAL.....	\$529,478.25

119 The Legislature finds that the above moral obligations
 120 and the appropriations made in satisfaction thereof shall
 121 be the full compensation for all claimants herein;
 122 provided that any claimant herein who, subsequent to
 123 the payment of an award, receives or recovers benefits
 124 or advantages for the economic loss not prior considered
 125 by the court of claims in the course of and in reduction
 126 of the award of compensation, shall inform the court of
 127 claims and crime victims compensation fund of such
 128 recovery for determination of the amounts thereof and
 129 requirement for the deposit thereof in the crime victims
 130 compensation fund.

CHAPTER 48

(Com. Sub. for S. B. 342—By Mr. Tonkovich, Mr. President, and Senator Harman)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to powers of the department of commerce.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-5. General powers of the department.

1 (a) The department of commerce shall have the author-
2 ity and duty to:

3 (1) Promote, encourage and facilitate the expansion
4 and development of markets for West Virginia products
5 and services and the state's national and international
6 image and prestige by any and all reasonable methods;

7 (2) Promote and encourage the location and develop-
8 ment of new business in the state and the maintenance
9 and expansion of existing business;

10 (3) Investigate and study conditions affecting West
11 Virginia business, industry and commerce; collect and
12 disseminate information, and engage in technical studies,
13 scientific investigations, statistical research and educa-
14 tional activities necessary or useful for the proper execu-
15 tion of the powers and duties of the department;

16 (4) Plan and develop an effective economic informa-
17 tion service that will directly assist business, education
18 and labor and also encourage businesses outside the state
19 to use industrial office facilities, professional, labor, finan-
20 cial and recreational facilities, services and products from
21 within the state;

22 (5) Encourage and develop commerce with other states
23 and nations and devise methods of removing trade bar-
24 riers that hamper the free flow of commerce between
25 this and other states and nations and for these purposes
26 cooperate with governmental, quasi-public and private
27 organizations in formulating and promoting the adoption
28 of compacts and agreements helpful to commerce and
29 labor;

30 (6) Conduct or encourage research designed to further
31 new and more extensive uses of the natural, human,
32 professional, technical and other resources of the state
33 with a view to the development of new products, indus-
34 trial processes, services and markets;

35 (7) Compile periodically a census of business and
36 industry in the state, in cooperation with other agencies,
37 and analyze and publish the information in such form as
38 to be most valuable to business and industry;

39 (8) Compile periodically a census of the crafts, trades,
40 skills and occupations of all adult persons in the state, in
41 cooperation with other agencies, and analyze and publish
42 the information in such form as to be most valuable to
43 business and industry;

44 (9) Study long-range trends and developments in the
45 industries, commerce and economic health of the state,
46 and analyze the reasons underlying such trends; study
47 costs and other factors affecting successful operation and
48 location of businesses within the state;

49 (10) Advertise and publicize the material, economic
50 quality of life, recreational and other advantages of the
51 state which render it a desirable place for commerce and
52 residence;

53 (11) Collect, compile and distribute information and
54 literature concerning the advantages and attractions of
55 the state, its historic and scenic points of interest and the
56 highway, transportation and other facilities of the state;

57 (12) Plan and carry out a program of information and
58 publicity designed to attract to West Virginia tourists,
59 visitors and other interested persons from outside the
60 state;

61 (13) Initiate, promote and conduct, or cause to be
62 conducted, research designed to further new and more
63 extensive uses and consumption of natural and other
64 resources and their by-products; and for such purposes,
65 to enter into contracts and agreements with research
66 laboratories maintained by educational or endowed in-
67 stitutions in this state;

68 (14) Manage the state's park and recreation system
69 for the benefit of the people of this state, and effectively
70 promote and advertise the same to increase public knowl-
71 edge and use thereof;

72 (15) To acquire for the state in the name of the depart-
73 ment of commerce by purchase, lease or agreement, or
74 accept or reject for the state, in the name of the depart-
75 ment of commerce, gifts, donations, contributions, be-
76 quests or devises of money, security or property, both
77 real and personal, and any interest in such property, in-

78 cluding lands and water, for state park or recreational
79 areas for the purpose of providing public recreation:
80 *Provided*, That any sale, exchange or transfer of such
81 property shall be subject to the procedures of article one,
82 chapter twenty of this code: *Provided, however*, That no
83 lands or waters which, on or before December thirty-
84 first, one thousand nine hundred eighty-five, were part of
85 the state's system of parks, or which were held or used
86 for recreational purposes, shall be subject to such sale,
87 exchange or transfer, by the department of commerce.
88 *Provided further*, That nothing herein contained shall be
89 construed to prevent the department of commerce from
90 selling, transferring or conveying to any other department
91 or agency of this state any lands or waters to which it
92 has title and which was sold, conveyed or transferred to
93 the department of commerce from the department or
94 agency to which it is being sold, conveyed or transferred.

95 (16) Make recommendations to the governor and the
96 Legislature of any legislation deemed necessary to facili-
97 tate the carrying out of any of the foregoing powers and
98 duties, and to exercise any other power that may be
99 necessary or proper for the orderly conduct of the busi-
100 ness of the department and the effective discharge of the
101 duties of the department; and

102 (17) To cooperate and assist in the production of mo-
103 tion pictures and television and other communications.

CHAPTER 49

(Com. Sub. for S. B. 341—By Mr. Tonkovich, Mr. President, and Senator Harman)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chap-
ter five-b of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the division of
tourism; purpose, powers and duties generally.

Be it enacted by the Legislature of West Virginia:

That section seven, article one, chapter five-b of the code of

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

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-7. Division of tourism; purpose; powers and duties generally.

1 It shall be the duty of the division of tourism:

2 (a) To promote and enhance the tourist industry and
3 improve tourist facilities and attractions;

4 (b) To compile a listing of all tourist facilities in this
5 state, whether public or private, including, but not limited
6 to, state parks and forests, camping grounds, backpacking
7 and hiking trails, public and private hunting areas (includ-
8 ing the game or fowl indigenous thereto), fishing lakes,
9 ponds, rivers and streams (including the type of fish in-
10 digenous thereto; and the dates of the stocking thereof),
11 ski resorts and areas, ice skating rinks or facilities, rifle
12 and pistol target practice areas, skeet and other shooting
13 facilities, archery ranges, swimming pools, lakes, ponds,
14 rivers and streams, hotels, motels, resorts and lodges (in-
15 cluding any attendant restaurant, banquet, meeting or
16 convention facilities or services), health spas or mineral
17 water or spring water health facilities, museums, cultural
18 centers, live performance theaters, colleges, schools, uni-
19 versities, technical centers, airports, railroad stations, bus
20 stations, river docks, boating areas, government or mili-
21 tary installations (which are not restricted to public
22 access), historical places, markers or places of events,
23 birthplaces of famous West Virginians, or any other thing
24 of like kind and nature, and to develop relative thereto a
25 series of films, videotapes, pamphlets, brochures and other
26 advertising or promotional media, and to distribute the
27 same in such a manner as to enhance the public's knowl-
28 edge about West Virginia and its many attractions;

29 (c) Develop a plan for tourist facility expansion and
30 new development, including financing;

31 (d) To develop a system, means and mechanism to
32 distribute the promotional media described in subdivision
33 (b) of this section, both nationally and internationally;

34 and to make the same available to travel agents, tour
35 groups, senior citizen organizations, airlines, railroads,
36 bus companies, newspapers, magazines, radio and televi-
37 sion stations, and the travel editors thereof; to develop, in
38 cooperation with the department of highways, a series of
39 information stations along interstate and other major
40 highways of this state, utilizing existing rest stop areas
41 and other areas at or near the main points of egress and
42 ingress of this state for the purpose of making said infor-
43 mation available to the public at large;

44 (e) To develop and implement a marketing strategy,
45 employing radio, television, magazine and newspaper
46 advertising, or any combination thereof, in those major
47 metropolitan areas of the nation, in order to attract the
48 residents thereof to visit and enjoy the tourist facilities
49 of this state: .

50 (f) To encourage, cooperate with and participate in,
51 any group or organization, including regional travel
52 councils, the purpose of which is to promote and advertise,
53 or encourage the use of, tourist facilities in West Vir-
54 ginia;

55 (g) To provide professional assistance, technical advice
56 or marketing strategies to any privately owned facility or
57 attraction, as described in subdivision (b) of this section,
58 which is open and available to the general public, which
59 has developed or is attempting to develop its own adver-
60 tising program;

61 (h) To employ, train and supervise a corps of informa-
62 tion specialists or tour guides in state parks and facilities
63 only who possess, or through their employment and train-
64 ing will possess, specific knowledge and information
65 about the historic, scenic, cultural, industrial, educational,
66 governmental, recreational and geographical significance
67 of the state and the various facilities or attractions de-
68 scribed in subdivision (b) of this section. In hiring the
69 information specialists herein provided, special preference
70 shall be given to senior citizens (those over sixty-two
71 years of age) and college students who are bona fide resi-
72 dents of the state and enrolled in any college or university
73 of this state, whether public or private, all of whom shall

74 be hired on a part-time basis and whose periods of em-
75 ployment may be seasonable;

76 (i) To assist tour groups, travel agencies, public car-
77 riers or other entities of like kind or nature in developing
78 a program of preplanned tours, visits or vacations in West
79 Virginia; and, in conjunction therewith, to coordinate the
80 activities of said tour groups, travel agencies, public
81 carriers or other entities with the services offered by any
82 of the facilities set forth in subdivision (b) of this section;
83 and to encourage said facilities to offer special or discount
84 rates to any party traveling with said tour groups, travel
85 agencies, public carriers or other entities of like kind or
86 nature; and

87 (j) To cooperate with the department of highways, in
88 developing a system of informational highway signing
89 relating to the recreational, scenic, historic and transpor-
90 tational facilities and attractions of the state that comply
91 with the current federal and state regulations as related
92 to outdoor advertising and signing as required by the
93 Manual of Uniform Traffic Control Devices.

CHAPTER 50

(S. B. 81—By Senator Tucker)

[Passed January 31, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred two, article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred four, article two of said chapter, all relating to consumer credit and protection; short titles, definitions, adding a definition of a cosigner; and consumer credit protection, notice to cosigners, deleting sureties, comakers, endorsers and guarantors from the definition of cosigner.

Be it enacted by the Legislature of West Virginia:

That section one hundred two, article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-

one, as amended, be amended and reenacted; and that section one hundred four, article two of said chapter be amended and reenacted, all to read as follows:

Article

1. **Short Titles, Definitions and General Provisions.**
2. **Consumer Credit Protection.**

ARTICLE 1. SHORT TITLES, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-102. General definitions.

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

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

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

15 (3) "Agricultural purpose" means a purpose related to
16 the production, harvest, exhibition, marketing,
17 transportation, processing or manufacture of agricultural
18 products by a natural person who cultivates, plants,
19 propagates or nurtures the agricultural products.
20 "Agricultural products" includes agricultural,
21 horticultural, viticultural and dairy products, livestock,
22 wildlife, poultry, bees, forest products, fish and shellfish,
23 and any products thereof, including processed and
24 manufactured products, and any and all products raised or
25 produced on farms and any processed or manufactured
26 products thereof.

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

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

32 (b) The amount actually paid or to be paid by the seller
33 pursuant to an agreement with the buyer to discharge a

34 security interest in or a lien on property traded in; and

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

36 (i) Any applicable sales, use, privilege, excise or
37 documentary stamp taxes;

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

40 (iii) Additional charges permitted by this chapter.

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

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

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

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

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

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

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

68 (e) Appraisal fees; and

69 (f) Credit reports.

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

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

74 (10) "Conspicuous": A term or clause is conspicuous
75 when it is so written that a reasonable person against whom

76 it is to operate ought to have noticed it. Whether a term or
77 clause is conspicuous or not is for decision by the court.

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

80 (12) (a) Except as provided in paragraph (b), "consumer
81 credit sale" is a sale of goods, services or an interest in land
82 in which:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 (15) "Cosigner" means a natural person who assumes
120 liability for the obligation on a consumer credit sale or
121 consumer loan without receiving goods, services or money
122 in return for the obligation or, in the case of a revolving
123 charge account or revolving loan account of a consumer,
124 without receiving the contractual right to obtain extensions
125 of credit under the account. The term cosigner includes any
126 person whose signature is requested as a condition to
127 granting credit to a consumer or as a condition for
128 forbearance on collection of a consumer's obligation that is
129 in default. The term cosigner does not include a spouse
130 whose signature is required to perfect a security interest. A
131 person who meets the definition in this paragraph is a
132 "cosigner," whether or not the person is designated as such
133 on the credit obligation.

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

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

143 (18) "Federal Consumer Credit Protection Act" means
144 the "Consumer Credit Protection Act" (Public Law 90-321;
145 82 Stat. 146), as amended, and includes regulations issued
146 pursuant to that act.

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

151 (20) "Home solicitation sale" means a consumer credit
152 sale in excess of twenty-five dollars in which the buyer
153 receives a solicitation of the sale at a place other than the
154 seller's business establishment at a fixed location and the
155 buyer's agreement or offer to purchase is there given to the
156 seller or a person acting for the seller. The term does not
157 include a sale made pursuant to a preexisting open-end
158 credit account with the seller in existence for at least three
159 months prior to the transaction, a sale made pursuant to
160 prior negotiations between the parties at the seller's
161 business establishment at a fixed location, a sale of motor

162 vehicles, mobile homes or farm equipment or a sale which
163 may be rescinded under the Federal Truth in Lending Act
164 (being Title I of the Federal Consumer Credit Protection
165 Act). A sale which would be a home solicitation sale if credit
166 were extended by the seller is a home solicitation sale
167 although the goods or services are paid for in whole or in
168 part by a consumer loan in which the creditor is subject to
169 claims and defenses arising from the sale.

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

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

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

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

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

186 (23) "Loan" includes:

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

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

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

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

197 (24) (a) "Loan finance charge" means the sum of (i) all
198 charges payable directly or indirectly by the debtor and
199 imposed directly or indirectly by the lender as an incident to
200 the extension of credit, including any of the following types
201 of charges which are applicable: Interest or any amount
202 payable under a point, discount, or other system of charges,
203 however denominated, premium or other charge for any
204 guarantee or insurance protecting the lender against the

205 consumer's default or other credit loss; and (ii) charges
206 incurred for investigating the collateral or credit-
207 worthiness of the consumer or for commissions or
208 brokerage for obtaining the credit, irrespective of the
209 person to whom the charges are paid or payable, unless the
210 lender had no notice of the charges when the loan was made.
211 The term does not include charges as a result of default,
212 additional charges, delinquency charges or deferral
213 charges.

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

220 (25) "Merchandise certificate" or "gift certificate"
221 means a writing issued by a seller or issuer of a seller credit
222 card, not redeemable in cash and usable in its face amount
223 in lieu of cash in exchange for goods or services.

224 (26) "Official fees" means:

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

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

237 (27) "Organization" means a corporation, government
238 or governmental subdivision or agency, trust, estate,
239 partnership, cooperative or association.

240 (28) "Payable in installments" means that payment is
241 required or permitted by agreement to be made in (a) two or
242 more periodic payments, excluding a down payment, with
243 respect to a debt arising from a consumer credit sale
244 pursuant to which a sales finance charge is made, (b) four or
245 more periodic payments, excluding a down payment, with
246 respect to a debt arising from a consumer credit sale
247 pursuant to which no sales finance charge is made, or (c)

248 two or more periodic payments with respect to a debt
249 arising from a consumer loan. If any periodic payment other
250 than the down payment under an agreement requiring or
251 permitting two or more periodic payments is more than
252 twice the amount of any other periodic payment, excluding
253 the down payment, the consumer credit sale or consumer
254 loan is "payable in installments."

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

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

273 (31) "Precomputed loan." A loan, refinancing or
274 consolidation is "precomputed" if the debt is expressed as a
275 sum comprising the principal and the amount of the loan
276 finance charge computed in advance.

277 (32) "Precomputed sale." A sale, refinancing or
278 consolidation is "precomputed" if the debt is expressed as a
279 sum comprising the amount financed and the amount of the
280 sales finance charge computed in advance.

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

285 (34) "Principal" of a loan means the total of:

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

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

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

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

294 (ii) Additional charges permitted by this chapter.

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

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

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

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

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

330 (40) "Sales finance charge" means the sum of (a) all
331 charges payable directly or indirectly by the buyer and
332 imposed directly or indirectly by the seller or issuer of a
333 seller credit card as an incident to the extension of credit,

334 including any of the following types of charges which are
335 applicable: Time-price differential, however denominated,
336 including service, carrying or other charge, premium or
337 other charge for any guarantee or insurance protecting the
338 seller against the buyer's default or other credit loss, and (b)
339 charges incurred for investigating the collateral or credit-
340 worthiness of the buyer or for commissions or brokerage for
341 obtaining the credit, irrespective of the person to whom the
342 charges are paid or payable; unless the seller had no notice
343 of the charges when the credit was granted. The term does
344 not include charges as a result of default, additional
345 charges, delinquency charges or deferral charges. If the
346 seller or issuer of a seller credit card purchases or satisfies
347 obligations of the consumer and the purchase or
348 satisfaction is made at less than the face amount of the
349 obligation, the discount is not part of the sales finance
350 charge.

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

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

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

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

374 (a) Organized, chartered or holding an authorization
375 certificate under the laws of this state or of the United

376 States which authorizes the person to make consumer
377 loans; and

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

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

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-104. Notice to cosigners.

1 No person shall be held liable as cosigner, or be charged
2 with personal liability for payment in a consumer credit
3 sale or consumer loan unless that person, in addition to and
4 before signing any instrument evidencing the transaction,
5 signs and receives a separate notice which clearly explains
6 his liability in the event of default by the consumer and also
7 receives a copy of the disclosure required by the "Federal
8 Consumer Credit Protection Act." Such notice shall be
9 sufficient if it appears under the conspicuous caption
10 "NOTICE TO COSIGNER" and contains substantially the
11 following language:

12 "You are being asked to guarantee this debt. Think
13 carefully before you do. If the borrower doesn't pay the
14 debt, you will have to. Be sure you can afford to pay it if you
15 have to, and that you want to accept this responsibility."

16 "You may have to pay up to the full amount of the debt if
17 the borrower does not pay. You may also have to pay late
18 fees or collection costs, which increase this amount."

19 "The creditor can collect this debt from you without first
20 trying to collect from the borrower. The creditor can use the
21 same collection methods against you that can be used
22 against the borrower, such as suing you, garnishing your
23 wages, etc. If this debt is ever in default, that fact may
24 become a part of your credit record."

25 "This notice is not the contract that makes you liable for
26 the debt."

27 The caption shall be typewritten or printed in at least
28 twelve point bold upper case type. The body of the notice
29 shall be typewritten or printed in at least eight point regular
30 type, in upper or lower case, where appropriate.

CHAPTER 51

(S. B. 654—By Mr. Tonkovich, Mr. President)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four, two hundred six 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 updating schedules one, two and four of the controlled substances law.

Be it enacted by the Legislature of West Virginia:

That sections two hundred four, two hundred six 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-2-206. Schedule II.
§60A-2-210. Schedule IV.

§60A-2-204. Schedule I.

- 1 (a) The controlled substances listed in this section are
2 included in Schedule I.
- 3 (b) Unless specifically excepted or unless listed in
4 another schedule, any of the following opiates, including its
5 isomers, esters, ethers, salts and salts of isomers, esters and
6 ethers whenever the existence of such isomers, esters, ethers
7 and salts is possible within the specific chemical
8 designation:
 - 9 (1) Acetylmethadol;
 - 10 (2) Allylprodine;

- 11 (3) Alphacetylmethadol;
- 12 (4) Alphameprodine;
- 13 (5) Alphamethadol;
- 14 (6) Alpha-methylfentanyl;
- 15 (7) Benzethidine;
- 16 (8) Betacetylmethadol;
- 17 (9) Betameprodine;
- 18 (10) Betamethadol;
- 19 (11) Betaprodine;
- 20 (12) Clonitazene;
- 21 (13) Dextromoramide;
- 22 (14) Diampromide;
- 23 (15) Diethylthiambutene;
- 24 (16) Difenoxin;
- 25 (17) Dimenoxadol;
- 26 (18) Dimepheptanol;
- 27 (19) Dimethylthiambutene;
- 28 (20) Dioxaphetylbutyrate;
- 29 (21) Dipipanone;
- 30 (22) Ethylmethylthiambutene;
- 31 (23) Etonitazene;
- 32 (24) Etoxeridine;
- 33 (25) Fenethylline;
- 34 (26) Furethidine;
- 35 (27) Hydroxypethidine;
- 36 (28) Ketobemidone;
- 37 (29) Levomoramide;
- 38 (30) Levophenacylmorphane;
- 39 (31) Morpheridine;
- 40 (32) Noracymethadol;
- 41 (33) Norlevorphanol;
- 42 (34) Normethadone;
- 43 (35) Norpipanone;
- 44 (36) Phenadoxone;
- 45 (37) Phenampromide;
- 46 (38) Phenomorphan;
- 47 (39) Phenoperidine;
- 48 (40) Piritramide;
- 49 (41) Proheptazine;
- 50 (42) Properidine;
- 51 (43) Propiram;
- 52 (44) Racemoramide;

53 (45) Tilidine;

54 (46) Trimeperidine.

55 (c) Unless specifically excepted or unless listed in
56 another schedule, any of the following opium derivatives,
57 its salts, isomers and salts of isomers whenever the
58 existence of such salts, isomers and salts of isomers is
59 possible within the specific chemical designation:

60 (1) Acetorphine;

61 (2) Acetyldihydrocodeine;

62 (3) Benzylmorphine;

63 (4) Codeine methylbromide;

64 (5) Codeine-N-Oxide;

65 (6) Cyprenorphine;

66 (7) Desomorphine;

67 (8) Dihydromorphine;

68 (9) Drotebanol;

69 (10) Etorphine (except HCl Salt);

70 (11) Heroin;

71 (12) Hydromorphenol;

72 (13) Methyldesorphine;

73 (14) Methyldihydromorphine;

74 (15) Morphine methylbromide;

75 (16) Morphine methylsulfonate;

76 (17) Morphine-N-Oxide;

77 (18) Myrophine;

78 (19) Nicocodeine;

79 (20) Nicomorphine;

80 (21) Normorphine;

81 (22) Phoclodine;

82 (23) Thebacon.

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

92 (1) 2,5-dimethoxyamphetamine; also known by these
93 trade or other names: 2,5-dimethoxy-a-methylphenethyl-
94 amine; 2,5-DMA;

- 95 (2) 3,4-methylenedioxy amphetamine;
96 (3) 4-bromo-2, 5-dimethoxyamphetamine or
97 4-bromo-2,5-dimethoxy-a-methylphenethylamine, or
98 4-bromo-2,5-DMA;
99 (4) 5-methoxy-3, 4-methylenedioxy amphetamine;
100 (5) 4-methoxyamphetamine; also known by these trade
101 or other names: 4-methoxy-amethylphenethylamine;
102 paramethoxyamphetamine; PMA;
103 (6) 3,4,5-trimethoxy amphetamine;
104 (7) Bufotenine; known also by these trade and other
105 names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole;
106 3-(2-dimethylamino-ethyl)-5 indolol; N-N-
107 dimethylserotonin; 5-hydroxy-N-dimethyltryptamine;
108 mappine;
109 (8) Diethyltryptamine; known also by these trade and
110 other names: N-N-Diethyltryptamine; "DET";
111 (9) Dimethyltryptamine; known also by the name
112 "DMT";
113 (10) 4-methyl-2,5-dimethoxy amphetamine; known
114 also by these trade and other names: 4-methyl-
115 2,5-dimethoxy-a-methylphenethylamine; "DOM"; "STP";
116 (11) Ibogaine; known also by these trade and other
117 names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-
118 2-methoxy-6,9-methano-5H-pyrido (1', 2': 1, 2 azepino
119 4,5b) indole; tabernanthe iboga;
120 (12) Lysergic acid diethylamide;
121 (13) Marihuana;
122 (14) Mescaline;
123 (15) Peyote; meaning all parts of the plant presently
124 classified botanically as *Lophophora Williamsii* Lematre,
125 whether growing or not; the seeds thereof; any extract from
126 any part of such plant; and every compound, manufacture,
127 salt, derivative, mixture or preparation of such plant, its
128 seeds or extracts;
129 (16) N-ethyl-3-piperidyl benzilate;
130 (17) N-methyl-3-piperidyl benzilate;
131 (18) Psilocybin;
132 (19) Psilocyn;
133 (20) Tetrahydrocannabinols; including synthetic
134 equivalents of the substances contained in the plant or in
135 the resinous extractives of *Cannabis* or synthetic
136 substances, derivatives and their isomers with similar

137 chemical structure and pharmacological activity such as
138 the following:

139 Delta 1

140 Cis or trans tetrahydrocannabinol, and their optical
141 isomers;

142 Delta 6

143 Cis or trans tetrahydrocannabinol, and their optical
144 isomers;

145 Delta 3, 4

146 Cis or trans tetrahydrocannabinil tetrahydrocannabinol,
147 and their optical isomers;

148 (21) Thiophene analog of phencyclidine; also known by
149 these trade or other names: (A) (1-(2-thienyl) cyclohexyl)
150 piperidine; (B) Thienyl analog of phencyclidine; TCPD;

151 (22) Ethylamine analog of phencyclidine... Some trade
152 or other names: N-ethyl-1-phenylcyclohexylamine, (1-
153 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
154 ethylamine, cyclohexamine, PCE;

155 (23) Pyrrolidine analog of phencyclidine... Some trade
156 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy,
157 PHP;

158 (24) N-ethylamphetamine;

159 (25) Parahexyl.

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

165 (1) Mecloqualone.

166 (2) Methaqualone.

167 (f) Any material, compound, mixture or preparation
168 which contains any quantity of the following substances:

169 (1) Acetyl-alpha-methylfentanyl;

170 (2) Alpha-methylthiofentanyl;

171 (3) Benzylfentanyl;

172 (4) Beta-hydroxyfentanyl;

173 (5) Beta-hydroxy-3-methylfentanyl;

174 (6) 3-Methylthiofentanyl;

175 (7) Thenylfentanyl;

176 (8) Thiofentanyl;

177 (9) 1-Methyl-4-phenyl-4-propionoxypiperidine
178 (MPPP), its optical isomers, salts and salts of isomers;

- 179 (10) 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine
180 (PEPAP), its optical isomers, salts and salts of isomers;
181 (11) 3-Methylfentanyl (N-(3-methyl-1-(2-
182 phenylethyl)-4-piperidyl)-N-phenylpropanamide), its
183 optical and geometric isomers, salts and salts of isomers.

§60A-2-206. Schedule II.

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

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

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

- 13 (A) Raw opium;
14 (B) Opium extracts;
15 (C) Opium fluid extracts;
16 (D) Powdered opium;
17 (E) Granulated opium;
18 (F) Tincture of opium;
19 (G) Codeine;
20 (H) Ethylmorphine;
21 (I) Ethorphine HCL;
22 (J) Hydrocodone;
23 (K) Hydromorphone;
24 (L) Metopon;
25 (M) Morphine;
26 (N) Oxycodone;
27 (O) Oxymorphone;
28 (P) Thebaine;

29 (2) Any salt, compound, isomer derivative or
30 preparation thereof which is chemically equivalent or
31 identical with any of the substances referred to in
32 subdivision (1) of this subsection, except that these
33 substances shall not include the isoquinoline alkaloids of
34 opium;

35 (3) Opium poppy and poppy straw;

36 (4) Coca leaves and any salt, compound, derivative or
37 preparation of coca leaves, and any salt, compound,
38 derivative or preparation thereof which is chemically
39 equivalent or identical with any of these substances, except
40 that the substances shall not include decocainized coca
41 leaves or extractions of coca leaves, which extractions do
42 not contain cocaine or ecgonine;

43 (5) Concentrate of poppy straw (the crude extract of
44 poppy straw in either liquid, solid or powder form which
45 contains the phenanthrine alkaloids of the opium poppy).

46 (c) Unless specifically excepted or unless in another
47 schedule, any of the following opiates, including its
48 isomers, esters, ethers, salts and salts of isomers, esters and
49 ethers whenever the existence of such isomers, esters, ethers
50 and salts is possible within the specific chemical
51 designation:

- 52 (1) Alphaprodine;
- 53 (2) Anileridine;
- 54 (3) Bezitramide;
- 55 (4) Dextrorphan - excepted;
- 56 (5) Dihydrocodeine;
- 57 (6) Diphenoxylate;
- 58 (7) Fentanyl;
- 59 (8) Isomethadone;
- 60 (9) Levopropoxyphene - excepted;
- 61 (10) Levomethorphan;
- 62 (11) Levorphanol;
- 63 (12) Metazocine;
- 64 (13) Methadone;
- 65 (14) Methadone-Intermediate, 4-cyano-2-dime-
66 thylamino-4, 4-diphenyl butane;
- 67 (15) Moramide-Intermediate, 2-methyl-
68 3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 69 (16) Pethidine; (meperidine);
- 70 (17) Pethidine-Intermediate-A, 4-cyano-1-methyl-
71 4-phenylpiperidine;
- 72 (18) Pethidine-Intermediate-B, ethyl-4-phenyl-
73 piperidine-ethyl-4-phenylpiperidine-4-carboxylate;
- 74 (19) Pethidine-Intermediate-C, 1-methyl-4-phenyl-
75 piperidine-4-carboxylic acid;
- 76 (20) Phenazocine;
- 77 (21) Piminodine;

- 78 (22) Racemethorphan;
- 79 (23) Racemorphan;
- 80 (24) Bulk Dextropropoxyphene (nondosage forms);
- 81 (25) Sufentanil.
- 82 (d) Unless specifically excepted or unless listed in
83 another schedule, any material, compound, mixture or
84 preparation which contains any quantity of the following
85 substances having a stimulant effect on the central nervous
86 system:
- 87 (1) Methamphetamine, including its salts, isomers and
88 salts of isomers;
- 89 (2) Amphetamine, its salts, optical isomers and salts of
90 its optical isomers;
- 91 (3) Phenmetrazine and its salts;
- 92 (4) Methlyphenidate and its salts.
- 93 (e) Unless specifically excepted or unless listed in
94 another schedule, any material, compound, mixture or
95 preparation which contains any quantity of the following
96 substances having a depressant effect on the central
97 nervous system, including its salts, isomers and salts of
98 isomers whenever the existence of such salts, isomers and
99 salts of isomers is possible within the specific chemical
100 designation:
- 101 (1) Amobarbital;
- 102 (2) Secobarbital;
- 103 (3) Pentobarbital;
- 104 (4) Phencyclidine.
- 105 (f) Hallucinogenic substances:
- 106 (1) Dronabinol (synthetic) in sesame oil and
107 encapsulated in a soft gelatin capsule in a United States
108 food and drug administration approved drug product.
109 (Some other names for dronabinol: (6aRtrans)-6a, 7, 8,
110 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo
111 9b,d) pyran-1-od or (-) delta-9-(trans)-
112 tetrahydrocanna-bonil).
- 113 (g) Immediate precursors. Unless specifically excepted
114 or unless listed in another schedule, any material,
115 compound, mixture, or preparation which contains any
116 quantity of the following substances:
- 117 (1) Immediate precursor to amphetamine and
118 methamphetamine:
- 119 (A) Phenylacetone;

- 120 Some trade or other names: phenyl-2-propanone; P2P;
121 benzylmethyl ketone; methyl benzyl ketone.
122 (2) Immediate precursors to phencyclidine (PCP):
123 (A) 1-phenylcyclohexylamine;
124 (B) 1-piperidinocyclohexanecarbonitrile (PCC).

§60A-2-210. Schedule IV.

- 1 (a) The controlled substances listed in this section are
2 included in Schedule IV.
3 (b) Unless specifically excepted or unless listed in
4 another schedule, any material, compound, mixture or
5 preparation which contains any quantity of the following
6 substances, including its salts, isomers and salts of isomers
7 whenever the existence of such salts, isomers and salts of
8 isomers is possible within the specific chemical
9 designation:
10 (1) Alprazolam;
11 (2) Barbitol;
12 (3) Chloral betaine;
13 (4) Chloral hydrate;
14 (5) Ethchlorvynol;
15 (6) Ethinamate;
16 (7) Halazepam;
17 (8) Methohexital;
18 (9) Meprobamate;
19 (10) Methlyphenobarbital, as methobarbital;
20 (11) Paraldehyde;
21 (12) Petrichloral;
22 (13) Phenobarbital;
23 (14) Lorazepam;
24 (15) Mebutamate;
25 (16) Clorazepate;
26 (17) Chlordiazepoxide;
27 (18) Clonazepam;
28 (19) Diazepam;
29 (20) Flurazepam;
30 (21) Oxazepam;
31 (22) Prazepam;
32 (23) Pentazocine;
33 (24) Temazepam.
34 (c) Any material, compound, mixture or preparation
35 which contains any quantity of the following substance,

36 including its salts, isomers (whether optical, position or
37 geometric) and salts of such isomers whenever the existence
38 of such salts, isomers and salts of isomers is possible:
39 Fenfluramine.

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

- 48 (1) Diethylpropion;
- 49 (2) Mazindol;
- 50 (3) Phentermine;
- 51 (4) Pemoline (including organometallic complexes and
52 chelates thereof);
- 53 (5) Pipradrol;
- 54 (6) SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

55 (e) Other substances. Unless specifically excepted or
56 unless listed in another schedule, any material, compound,
57 mixture or preparation which contains any quantity of the
58 following substances, including its salts:

- 59 (1) Dextropropoxyphene (alpha - (+) - 4 -
60 dimethylamino-1, 2 - diphenyl - 3 - methyl - 2 -
61 propionoxybutane).

62 (f) Not more than 1 milligram of difenoxin and not less
63 than 25 micrograms of atropine sulfate per dosage unit.

64 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other
65 organic nitrites are controlled substances and no product
66 containing these compounds as a significant component
67 shall be possessed, bought or sold other than pursuant to a
68 bona fide prescription, or for industrial or manufacturing
69 purposes.

CHAPTER 52

(H. B. 1872—By Delegate Ryan and Delegate Roop)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article five,

chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fiscal affairs of counties; publication and disposition of financial statements; and when publication is to be made.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. FISCAL AFFAIRS.

§7-5-16. Preparation, publication and disposition of financial statements.

1 The county commission of every county, within sixty
2 days after the first session held after the beginning of
3 each fiscal year, shall prepare on a form to be pres-
4 cribed by the state tax commissioner, and cause to be
5 published a statement revealing (a) the receipts and
6 expenditures of the county during the previous fiscal
7 year arranged under descriptive headings, (b) the name
8 of each firm, corporation, and person who received more
9 than fifty dollars from any fund during the previous
10 fiscal year, together with the amount received and the
11 purpose for which paid, and (c) all debts of the county,
12 the purpose for which each debt was contracted, its due
13 date, and to what date the interest thereon has been
14 paid. Such statement shall be published as a Class I-0
15 legal advertisement in compliance with the provisions of
16 article three, chapter fifty-nine of this code, and the
17 publication area for such publication shall be the county.

18 The county commission shall transmit to any resident
19 of the county requesting the same a copy of the
20 published statement for the fiscal year designated,
21 supplemented by a list of the names of each firm,
22 corporation, and person who received less than fifty
23 dollars from any fund during such fiscal year showing
24 the amount paid to each and the purpose for which paid.

25 If a county commission willfully fail or refuse to
26 perform the duties hereinbefore named, every member
27 of such commission, concurring in such failure or

28 refusal, shall be guilty of a misdemeanor, and, upon
29 conviction thereof, shall be fined not less than fifty nor
30 more than one hundred dollars; and the prosecuting
31 attorney of any such county shall, when such failure or
32 refusal shall come to his knowledge, immediately
33 present the evidence thereof to the grand jury if in
34 session, and if not in session, he shall institute proper
35 criminal proceedings before a justice against any such
36 offender, and cause such failure or refusal to be
37 investigated by the next succeeding grand jury.

CHAPTER 53

(Com. Sub. for H. B. 1187—By Delegate Roop and Delegate Ryan)

[Passed February 18, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen-a, all relating to county property; board of trustees for hospital, clinic or long-term care facility; appointment of treasurer for county hospitals and when appointed; transfer of moneys; bonding of treasurer; approval of bank accounts; authority to invest; providing that county hospitals need not use the sheriff as treasurer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COUNTY PROPERTY.

§7-3-15. Board of trustees for hospital, clinic or long-term care facility.

§7-3-15. Transfer of moneys; treasurer for county hospitals; bonding of treasurer; approval of bank accounts; authority to invest.

§7-3-15. Board of trustees for hospital, clinic or long-term care facility.

1 The administration and management of any county
2 public hospital, clinic, long-term care facility or other
3 related facility acquired, equipped, furnished, improved
4 or extended under section fourteen of this article shall
5 be vested in a board of trustees, consisting of not less
6 than five members appointed by the county commission.
7 Prior to the issuance of any bonds under the provisions
8 of section fourteen of this article, the county commission
9 shall appoint two of such trustees for a term of two
10 years, two trustees for a term of four years, and one
11 trustee for a term of six years from the first day of the
12 month during which appointed. Upon the expiration of
13 such initial appointments, the term of each new
14 appointee shall be six years, except that any person
15 appointed to fill a vacancy occurring prior to the
16 expiration of the term for which his predecessor was
17 appointed shall be appointed only for the remainder of
18 such term. Any trustee shall be eligible for reappoint-
19 ment upon the expiration of his term. The trustees shall
20 receive no compensation for their services, but shall be
21 reimbursed for any expenses incurred in the perfor-
22 mance of their duties. Any trustee may be removed by
23 the county commission for incompetency, neglect of duty
24 or malfeasance in office after an opportunity to be heard
25 at a public hearing before the county commission. At the
26 first meeting of the board of trustees, and annually
27 thereafter, it shall organize by designating one of its
28 members as chairman and by appointing a secretary
29 and a treasurer who may, but need not be, trustees:
30 *Provided*, That the board of trustees shall designate a
31 treasurer at its first regular meeting subsequent to the
32 effective date of this section.

33 Such board of trustees shall provide for the employ-
34 ment of and shall fix the compensation for and remove
35 at pleasure all professional, technical and other em-
36 ployees, skilled or unskilled, as it may deem necessary
37 for the operation and maintenance of the hospital, clinic,
38 long-term care facility or other related facility; and
39 disbursement of funds in such operation and mainte-

40 nance shall be made only upon order and approval of
41 such board. The board of trustees shall make all rules
42 and regulations governing its meetings and the opera-
43 tion of the hospital, clinic, long-term care facility or
44 other related facility.

§7-3-15a. Transfer of moneys; treasurer for county hospitals; bonding of treasurer; approval of bank accounts; authority to invest.

1 The sheriff of each county shall remit to the board of
2 trustees of any county hospital all moneys in his
3 possession held on behalf of such county hospital,
4 whether or not deposited in a bank or depository unless
5 the sheriff has been designated treasurer of the county
6 hospital as provided in this section. Such transfer of
7 funds shall be made as of the balances on hand on the
8 thirtieth day of June of the year in which the board of
9 trustees of such county hospital appoints a treasurer
10 other than the sheriff, and shall be completed no later
11 than the first day of August of that year. Such transfer
12 shall be adjudged complete and final upon the approval
13 of the sheriff's official settlement for the fiscal year
14 ending on the thirtieth day of June of the year in which
15 the board of trustees of such county hospital appoints a
16 treasurer other than the sheriff, and, any minor
17 adjustment made necessary by the actually known
18 figures shall also be made at that time. All balances in
19 all county hospital funds at the end of each month after
20 the thirtieth day of June of the year in which the board
21 of trustees of county hospitals appoints a treasurer other
22 than the sheriff shall be transferred by the sheriff to the
23 board of trustees of such county hospital not later than
24 the tenth day of the following month.

25 The treasurer for the board shall be the fiscal officer
26 of the board, or an employee commonly designated as
27 the person in charge of the financial affairs of the
28 hospital board or the county sheriff. Upon appointment
29 this person shall be titled and referred to as treasurer
30 of the county hospital. For the faithful performance of
31 this duty, he shall execute a bond, to be approved by the
32 board of trustees of such county hospital, in the penalty
33 to be fixed by such board, not to exceed the amount of

34 funds which it is estimated he will handle within any
35 period of two months. The premium on such bond shall
36 be paid by the county hospital.

37 The board of trustees of such county hospital may
38 open a bank account, or accounts, as required to
39 adequately and properly transact the business of the
40 district in a depository, or banks, within the county.
41 Such depositories, or banks, shall provide bond to cover
42 the maximum amount to be deposited at any one time.
43 On and after the first day of July, one thousand nine
44 hundred eighty-six, all levies and any other moneys
45 received by the sheriff and paid to the treasurer of such
46 county hospital shall be deposited in these accounts and
47 all proper payments from such funds shall be made by
48 the designated depository or bank upon order or draft
49 presented for payment and signed by the duly autho-
50 rized signatories of the board of trustees: *Provided*, That
51 in determining the depository for county hospital funds
52 a board member who has a pecuniary interest in a bank
53 within the county shall not participate in the determi-
54 nation of the depository for such funds.

55 If it be deemed that sufficient funds are on hand in
56 any account at any one time which may be more than
57 are normally required for the payment of incurred
58 expenses, such funds in the amount so deemed available
59 may be invested by the treasurer of the county board
60 with the state sinking fund commission, or in guaran-
61 teed certificates of deposit issued by the depository or
62 bank, or other guaranteed investments such as treasury
63 bills, treasury notes or certificates of deposit issued by
64 either the United States government or a banking
65 institution in which federal or state guarantees are
66 applicable. Interest earned in such investments is to be
67 credited to the fund from which the moneys were
68 originally available.

69 For the purposes of this section "county hospital"
70 means any county public hospital, clinic, long-term care
71 facility or other related facility acquired, equipped,
72 furnished, improved or extended under section fourteen
73 of this article.

CHAPTER 54

(Com. Sub. for H. B. 1304—By Delegate Wiedebusch)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-five, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article five, chapter sixty-one of said code, relating to penal correctional and juvenile institutions and jails and offenses related thereto generally; aiding escape of lawfully detained adults and juveniles; penalties; misdemeanor to convey certain article to lawfully detained persons without authority; penalties; felony to transport a firearm or other dangerous or deadly weapon onto the grounds of any jail or prison, or juvenile facility or detention center; penalties; securing articles manufactured at or belonging to any jail, prison, juvenile facility or detention center from any lawfully detained person; penalties; and persuading, inducing or enticing or attempting to persuade, induce or entice lawfully detained persons to escape or to be insubordinate; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties.

- 1 (a) Where any adult or juvenile is lawfully detained
- 2 in custody or as an inmate or prisoner in any jail or
- 3 prison or as a resident of any juvenile facility or juvenile
- 4 detention center, if any other person shall convey
- 5 anything into the jail, prison, facility or detention center
- 6 or other place of custody of such adult or juvenile with

7 the intent to aid or facilitate such adult's or juvenile's
8 escape or attempted escape therefrom, or if such other
9 person shall forcibly rescue or attempt to rescue such
10 adult or juvenile therefrom, such other person is guilty
11 of a felony, and, upon conviction thereof, shall be
12 confined in the penitentiary not less than one nor more
13 than five years.

14 (b) Where any adult or juvenile is lawfully detained
15 in custody or as an inmate or prisoner in any jail or
16 prison or as a resident of any juvenile facility or juvenile
17 detention center, if any other person shall convey
18 alcoholic liquors or nonintoxicating beer, any money or
19 other thing of value, any written or printed matter, any
20 article of merchandise, food or clothing, any medicine,
21 drug, poison, explosive, utensil or instrument of any
22 kind to such adult or juvenile without the express
23 authority and permission of the jailer, warden, or other
24 supervising officer and with knowledge that such adult
25 or juvenile is so lawfully detained, such other person is
26 guilty of a misdemeanor, and, upon conviction thereof,
27 shall be fined not less than fifty dollars nor more than
28 five hundred dollars and imprisoned in the county jail
29 not less than three nor more than twelve months:
30 *Provided*, That if any person transports a firearm or
31 other dangerous or deadly weapon onto the grounds of
32 any jail or prison, or juvenile facility or detention center
33 within this state and is unauthorized by law to do so,
34 such person is guilty of a felony, and, upon conviction
35 thereof, shall be imprisoned in the penitentiary not less
36 than one year nor more than five years.

37 (c) Whoever purchases, accepts as a gift, or secures by
38 barter, trade or in any other manner, any article or
39 articles manufactured at or belonging to any jail, prison,
40 juvenile facility or juvenile detention center from any
41 inmate prisoner or resident detained therein is guilty of
42 a misdemeanor, and, upon conviction thereof, shall be
43 fined not less than fifty dollars nor more than five
44 hundred dollars and imprisoned in the county jail not
45 less than three nor more than twelve months.

46 (d) Whoever persuades, induces or entices or attempts
47 to persuade, induce or entice, any person who is an

48 inmate or prisoner in any jail or prison or resident of
 49 any juvenile facility or juvenile detention center to
 50 escape therefrom or to engage or aid in any insubordi-
 51 nation to the authority of such jail, prison, juvenile
 52 facility or juvenile detention center is guilty of a
 53 misdemeanor, and, upon conviction thereof, shall be
 54 fined not less than fifty dollars nor more than five
 55 hundred dollars and imprisoned in the county jail not
 56 less than three nor more than twelve months.

CHAPTER 55

(H. B. 1521—By Mr. Speaker, Mr. Albright, and Delegate Swann,
 by request of the Executive)

[Passed March 3, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four-c, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the restrictions on intercepting or monitoring of customer telephone calls and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24c. Intercepting or monitoring customer telephone calls; penalty.

1 . (a) It is unlawful for any person, firm or corporation
 2 to intercept or monitor, or to attempt to intercept or
 3 monitor, the transmission of a message, signal or other
 4 communication by telephone between an employee or
 5 similar agent of such person, firm or corporation and
 6 a customer of such person, firm or corporation unless
 7 such person, firm or corporation does all of the

8 following:

9 (1) Notifies each employee or agent subject to inter-
10 ception or monitoring that their telephone messages are
11 subject to interception or monitoring.

12 (2) Provides telephone instruments for employee's
13 personal use which are not subject to intercepting or
14 monitoring.

15 Any person, firm or corporation violating the provi-
16 sions of this section is guilty of a misdemeanor, and,
17 upon conviction thereof, shall be fined not less than fifty
18 nor more than two hundred dollars, or imprisoned in the
19 county jail not more than one year, or both fined and
20 imprisoned.

21 (b) Nothing contained in this section shall require
22 marking of telephone instruments nor require consent
23 to interception or monitoring, in the case of a wiretap
24 or other form of monitoring which is engaged in for the
25 sole purpose of law enforcement and which is lawful in
26 all other respects.

27 (c) The public service commission shall not issue any
28 rule or regulation requiring or suggesting the monitor-
29 ing of any message, signal or other communication by
30 telephone to or from any telephone utility customer so
31 as to obtain the content or substance of any such
32 communication.

CHAPTER 56

(Com. Sub. for H. B. 2026—By Mr. Speaker, Mr. Albright, and Delegate Farley)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections fifteen-a and nineteen-a, allowing deputy sheriffs to engage in police work in addition to their regular work as deputy sheriffs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-15a. Additional part-time police work permitted.

§7-14-19a. Additional police work for deputy sheriffs in noncivil service counties.

§7-14-15a. Additional part-time police work permitted.

1 Deputy sheriffs shall be allowed to engage in police
2 work for pay in addition to their regular work as a
3 deputy sheriff.

4 The deputy sheriffs civil service commission shall
5 prescribe and enforce rules and regulations fixing the
6 terms and conditions under which deputy sheriffs may
7 engage in police work in addition to their normal duties
8 as deputy sheriffs. These rules and regulations must
9 prohibit discrimination, as far as practicable, between
10 deputy sheriffs with regard to the allocation of addi-
11 tional police work. No sheriff may have a direct or
12 indirect pecuniary interest in any outside employment.
13 A deputy sheriff performing additional police work
14 shall wear an identifying armband to indicate special
15 duty.

§7-14-19a. Additional police work for deputy sheriffs in noncivil service counties.

1 The sheriff of any county with a population of less
2 than twelve thousand five hundred which has not
3 adopted civil service for deputy sheriffs pursuant to the
4 provisions of chapter seven, article fourteen, section
5 nineteen, may allow his deputy sheriffs to do additional
6 police work in addition to his normal duties as a deputy
7 sheriff. Before such sheriff shall be allowed to grant
8 such additional police work to his deputy sheriffs, he
9 must prepare a plan setting forth the terms and
10 conditions under which his deputy sheriffs may engage
11 in additional police work. Such terms and conditions
12 must prohibit discrimination between deputies with

13 regard to the allocation of additional police work. Such
14 plans shall be submitted to the county commission of
15 such county and shall be subject to the approval of said
16 county commission. No sheriff may have a direct or
17 indirect pecuniary interest in any outside employment.
18 A deputy sheriff performing additional police work
19 shall wear an identifying armband to indicate special
20 duty.

CHAPTER 57

(Com. Sub. for S. B. 524—By Senator Boettner)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-two; to amend and reenact sections five and nine, article three, chapter seventeen-b of said code; to amend and reenact section three, article four of said chapter; to amend and reenact sections two and seven, article five, chapter seventeen-c of said code; and to amend and reenact sections one, two and three, article five-a of said chapter, all relating to drunk driving enforcement program; purpose; grounds for mandatory revocation of license by department; officers entitled to secure license; where fees to be deposited; increase of pickup fee; increased period of suspension for persons age sixteen through eighteen; driving while license suspended or revoked; increased criminal penalties for driving while license suspended or revoked for driving under the influence of alcohol or drugs or refusal to take secondary chemical tests or with an elevated blood alcohol level; driving under influence of alcohol, controlled substances or drugs; penalties; adding to the alternative forms of driving under the influence the offense of driving with an alcohol blood level of ten hundredths of one percent or more, by weight; criminal penalties; permitting a second driving under the influence to be charged when charges of a prior offense are pending; refusal to submit to tests; revocation of license; consent not withdrawn if person arrested is incapable; hearing; hearing examiner; funding for hearing

process; clarifying that an initial refusal to take a secondary test shall be deemed to be a final refusal; implied consent to administrative procedure; revocation for driving under the influence; refusal to submit to secondary chemical test; authorizing the confiscation of a driver's license by an arresting officer and the issuance and renewal upon hearing request of a temporary license; safety and treatment program; reissuance of license; certification of completion; limit on judicial stay of suspension.

Be it enacted by the Legislature of West Virginia:

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

Chapter

15. Public Safety.

17B. Motor Vehicle Operators' and Chauffeurs' Licenses.

17C. Traffic Regulations and Laws of the Road.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-42. Drunk driving enforcement program established; purpose.

1 The superintendent of the department shall establish and
 2 maintain a drunk driving enforcement program for the
 3 purpose of enforcing drunk driving laws in the state,
 4 especially the investigation and apprehension of persons
 5 driving illegally on previously revoked or suspended
 6 operators' licenses for drunk driving related offenses. The
 7 superintendent shall develop a program in cooperation
 8 with local law-enforcement agencies to accomplish this
 9 purpose.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

Article

3. Cancellation, Suspension or Revocation of Licenses.

4. Violation of License Provisions.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-5. Grounds for mandatory revocation of license by department.

§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.

§17B-3-5. Grounds for mandatory revocation of license by department.

1 The department shall forthwith revoke the license of any
2 operator or chauffeur upon receiving a record of such
3 operator's or chauffeur's conviction of any of the following
4 offenses, when such conviction has become final: *Provided*,
5 That if the convicted driver had not reached his or her
6 nineteenth birthday at the time of the conduct for which the
7 license is revoked under this section, the license shall be
8 revoked until the driver's nineteenth birthday, or the
9 applicable statutory period of revocation, whichever is
10 longer:

11 (1) Manslaughter or negligent homicide resulting from
12 the operation of a motor vehicle;

13 (2) Any felony in the commission of which a motor
14 vehicle is used;

15 (3) Failure to stop and render aid as required under the
16 laws of this state in the event of involvement in a motor
17 vehicle accident resulting in the death or personal injury of
18 another;

19 (4) Perjury or the making of a false affidavit or
20 statement under oath to the department under this chapter
21 or under any other law relating to the ownership or
22 operation of motor vehicles;

23 (5) Conviction, or forfeiture of bail not vacated, upon
24 three charges of reckless driving committed within a period
25 of twenty-four months;

26 (6) Driving under the influence of alcohol, controlled
27 substances or other drugs outside the state of West Virginia
28 which conviction is under a municipal ordinance or statute
29 of the United States or any other state of an offense which
30 has the same elements as an offense described in section
31 two, article five, chapter seventeen-c of this code; and

32 (7) Nothing herein shall prohibit the department from
33 exercising its authority to revoke or suspend a person's
34 license to drive a motor vehicle in this state, as provided in
35 chapter seventeen-c of this code.

§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.

1 The department upon suspending or revoking a license
2 shall require that such license shall be surrendered to and
3 be retained by the department: *Provided*, That before such
4 license may be reinstated, the licensee shall pay a fee of
5 fifteen dollars, in addition to all other fees and charges,
6 which fee shall be collected by the department and
7 deposited in the state road fund to be appropriated to the
8 department for use in the enforcement of the provisions of
9 this section. If any person shall willfully fail to return to the
10 department such suspended or revoked license, the
11 commissioner shall secure possession thereof through the
12 department of public safety, a local law-enforcement
13 agency, or other lawful means and return same to the
14 department. Said superintendent of the department of
15 public safety or local law-enforcement agency shall make a
16 report in writing to the commissioner as to the result of his
17 efforts to secure the possession and return of such license.
18 For each license which shall have been suspended or
19 revoked and which the holder thereof shall have willfully
20 failed to return to the department within ten days from the
21 time that such suspension or revocation becomes effective
22 and which shall have been certified to the superintendent of
23 the department of public safety as aforesaid, the holder
24 thereof, before the same may be reinstated, in addition to all
25 other fees and charges, shall pay a fee of fifty dollars, which
26 shall be collected by the department of motor vehicles and
27 paid into the state treasury and credited to the general fund
28 to be appropriated to the department of public safety for
29 application in the enforcement of road laws.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

1 (a) Except as otherwise provided in subsection (b) of

2 this section, any person who drives a motor vehicle on any
3 public highway of this state at a time when his privilege so
4 to do has been lawfully suspended or revoked shall, for the
5 first offense, be guilty of a misdemeanor, and, upon
6 conviction thereof, shall be imprisoned in the county jail for
7 forty-eight hours and, in addition to such mandatory jail
8 sentence, shall be fined not less than fifty dollars nor more
9 than five hundred dollars; for the second offense, such
10 person shall be guilty of a misdemeanor, and, upon
11 conviction thereof, shall be punished by imprisonment in
12 the county jail for a period of ten days and, in addition to
13 such mandatory jail sentence, shall be fined not less than
14 one hundred dollars nor more than five hundred dollars; for
15 the third or any subsequent offense, such person shall be
16 guilty of a misdemeanor, and, upon conviction thereof, shall
17 be imprisoned in the county jail for six months and, in
18 addition to such mandatory jail sentence, shall be fined not
19 less than one hundred fifty dollars nor more than five
20 hundred dollars.

21 (b) Any person who drives a motor vehicle on any public
22 highway of this state at a time when his privilege so to do
23 has been lawfully revoked for driving under the influence of
24 alcohol, controlled substances or other drugs, or while
25 having an alcoholic concentration in his blood of ten
26 hundredths of one percent or more, by weight, or for
27 refusing to take a secondary chemical test of blood alcohol
28 content shall, for the first offense, be guilty of a
29 misdemeanor, and, upon conviction thereof, shall be
30 imprisoned in the county jail for six months and in addition
31 to such mandatory jail sentence, shall be fined not less than
32 one hundred dollars nor more than five hundred dollars; for
33 the second offense, such person shall be guilty of a
34 misdemeanor, and, upon conviction thereof, shall be
35 punished by imprisonment in the county jail for a period of
36 one year and, in addition to such mandatory jail sentence,
37 shall be fined not less than one thousand dollars nor more
38 than three thousand dollars; for the third or any subsequent
39 offense, such person shall be guilty of a felony, and, upon
40 conviction thereof, shall be imprisoned in the penitentiary
41 for not less than one year nor more than three years and, in
42 addition to such mandatory jail sentence, shall be fined not
43 less than three thousand dollars nor more than five
44 thousand dollars.

45 (c) The department upon receiving a record of the
 46 conviction of any person under this section upon a charge of
 47 driving a vehicle while the license of such person was
 48 lawfully revoked shall extend the period of such suspension
 49 for an additional like period and if the conviction was upon
 50 a charge of driving while a license was revoked lawfully the
 51 department shall not issue a new license for an additional
 52 period of one year from and after the date such person
 53 would otherwise have been entitled to apply for a new
 54 license.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article

5. Serious Traffic Offenses.

5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving Under the Influence of Alcohol, Controlled Substances or Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- 1 (a) Any person who:
- 2 (1) Drives a vehicle in this state while:
 - 3 (A) He is under the influence of alcohol, or
 - 4 (B) He is under the influence of any controlled
 - 5 substance, or
 - 6 (C) He is under the influence of any other drug, or
 - 7 (D) He is under the combined influence of alcohol and
 - 8 any controlled substance or any other drug, or
 - 9 (E) He has an alcohol concentration in his blood of ten
 - 10 hundredths of one percent or more, by weight; and
 - 11 (2) When so driving does any act forbidden by law or
 - 12 fails to perform any duty imposed by law in the driving of
 - 13 such vehicle, which act or failure proximately causes the
 - 14 death of any person within one year next following such act
 - 15 or failure; and
 - 16 (3) Commits such act or failure in reckless disregard of

17 the safety of others, and when the influence of alcohol,
18 controlled substances or drugs is shown to be a contributing
19 cause to such death, shall be guilty of a felony, and, upon
20 conviction thereof, shall be imprisoned in the penitentiary
21 for not less than one nor more than ten years and shall be
22 fined not less than one thousand dollars nor more than three
23 thousand dollars.

24 (b) Any person who:

25 (1) Drives a vehicle in this state while:

26 (A) He is under the influence of alcohol, or

27 (B) He is under the influence of any controlled
28 substance, or

29 (C) He is under the influence of any other drug, or

30 (D) He is under the combined influence of alcohol and
31 any controlled substance or any other drug, or

32 (E) He has an alcohol concentration in his blood of ten
33 hundredths of one percent or more, by weight; and

34 (2) When so driving does any act forbidden by law or
35 fails to perform any duty imposed by law in the driving of
36 such vehicle, which act or failure proximately causes the
37 death of any person within one year next following such act
38 or failure, shall be guilty of a misdemeanor, and, upon
39 conviction thereof, shall be imprisoned in the county jail for
40 not less than ninety days nor more than one year and shall
41 be fined not less than five hundred dollars nor more than
42 one thousand dollars.

43 (c) Any person who:

44 (1) Drives a vehicle in this state while:

45 (A) He is under the influence of alcohol, or

46 (B) He is under the influence of any controlled
47 substance, or

48 (C) He is under the influence of any other drug, or

49 (D) He is under the combined influence of alcohol and
50 any controlled substance or any other drug, or

51 (E) He has an alcohol concentration in his blood of ten
52 hundredths of one percent or more, by weight; and

53 (2) When so driving does any act forbidden by law or
54 fails to perform any duty imposed by law in the driving of
55 such vehicle, which act or failure proximately causes bodily
56 injury to any person other than himself, shall be guilty of a
57 misdemeanor, and, upon conviction thereof, shall be
58 imprisoned in the county jail for not less than one day nor

59 more than one year, which jail term shall include actual
60 confinement of not less than twenty-four hours, and shall
61 be fined not less than two hundred dollars nor more than
62 one thousand dollars.

63 (d) Any person who:

64 (1) Drives a vehicle in this state while:

65 (A) He is under the influence of alcohol, or

66 (B) He is under the influence of any controlled
67 substance, or

68 (C) He is under the influence of any other drug, or

69 (D) He is under the combined influence of alcohol and
70 any controlled substance or any other drug, or

71 (E) He has an alcohol concentration in his blood of ten
72 hundredths of one percent or more, by weight; and

73 (2) Shall be guilty of a misdemeanor, and, upon
74 conviction thereof, shall be imprisoned in the county jail for
75 not less than one day nor more than six months, which jail
76 term shall include actual confinement of not less than
77 twenty-four hours, and shall be fined not less than one
78 hundred dollars nor more than five hundred dollars.

79 (e) Any person who, being an habitual user of narcotic
80 drugs or amphetamine or any derivative thereof, drives a
81 vehicle in this state, shall be guilty of a misdemeanor, and,
82 upon conviction thereof, shall be imprisoned in the county
83 jail for not less than one day nor more than six months,
84 which jail term shall include actual confinement of not less
85 than twenty-four hours, and shall be fined not less than one
86 hundred dollars nor more than five hundred dollars.

87 (f) Any person who:

88 (1) Knowingly permits his vehicle to be driven in this
89 state by any other person who is:

90 (A) Under the influence of alcohol, or

91 (B) Under the influence of any controlled substance, or

92 (C) Under the influence of any other drug, or

93 (D) Under the combined influence of alcohol and any
94 controlled substance or any other drug, or

95 (E) Has an alcohol concentration in his blood of ten
96 hundredths of one percent or more, by weight; and

97 (2) Shall be guilty of a misdemeanor, and, upon
98 conviction thereof, shall be imprisoned in the county jail for
99 not more than six months and shall be fined not less than
100 one hundred dollars nor more than five hundred dollars.

101 (g) Any person who:

102 Knowingly permits his vehicle to be driven in this state by
103 any other person who is an habitual user of narcotic drugs
104 or amphetamines or any derivative thereof, shall be
105 guilty of a misdemeanor, and, upon conviction thereof,
106 shall be imprisoned in the county jail for not more than
107 six months and shall be fined not less than one hundred
108 dollars nor more than five hundred dollars.

109 (h) A person violating any provision of subsection (b),
110 (c), (d), (e), (f) or (g) of this section shall, for the second
111 offense under this section, be guilty of a misdemeanor, and,
112 upon conviction thereof, shall be imprisoned in the county
113 jail for a period of not less than six months nor more than
114 one year, and the court may, in its discretion, impose a fine
115 of not less than one thousand dollars nor more than three
116 thousand dollars.

117 (i) A person violating any provision of subsection (b),
118 (c), (d), (e), (f) or (g) of this section shall, for the third or any
119 subsequent offense under this section, be guilty of a felony,
120 and, upon conviction thereof, shall be imprisoned in the
121 penitentiary for not less than one nor more than three years,
122 and the court may, in its discretion, impose a fine of not less
123 than three thousand dollars nor more than five thousand
124 dollars.

125 (j) For purposes of subsections (h) and (i) of this section
126 relating to second, third and subsequent offenses, the
127 following types of convictions shall be regarded as
128 convictions under this section:

129 (1) Any conviction under the provisions of subsection
130 (a), (b), (c), (d), (e) or (f) of the prior enactment of this section
131 for an offense which occurred on or after the first day of
132 September, one thousand nine hundred eighty-one, and
133 prior to the effective date of this section;

134 (2) Any conviction under the provisions of subsection
135 (a) or (b) of the prior enactment of this section for an offense
136 which occurred within a period of five years immediately
137 preceding the first day of September, one thousand nine
138 hundred eighty-one;

139 (3) Any conviction under a municipal ordinance of this
140 state or any other state or a statute of the United States or of
141 any other state of an offense which has the same elements as
142 an offense described in this section, which offense occurred

143 after June tenth, one thousand nine hundred eighty-three;
144 and

145 (4) A person may be charged in a warrant or indictment
146 or information for a second or subsequent offense under
147 this section, if the person has been previously arrested for or
148 charged with a violation of this section which is alleged to
149 have occurred within the applicable time periods for prior
150 offenses, notwithstanding the fact that there has not been a
151 final adjudication of the charges for the alleged previous
152 offense. In such case, the warrant or indictment or
153 information must set forth the date, location and
154 particulars of the previous offense or offenses. No person
155 may be convicted of a second or subsequent offense under
156 this section unless the conviction for the previous offense
157 has become final.

158 (k) The fact that any person charged with a violation of
159 subsection (a), (b), (c), (d) or (e) of this section, or any person
160 permitted to drive as described under subsection (f) or (g) of
161 this section, is or has been legally entitled to use alcohol, a
162 controlled substance or a drug shall not constitute a defense
163 against any charge of violating subsection (a), (b), (c), (d),
164 (e), (f) or (g) of this section.

165 (l) For purposes of this section, the term "controlled
166 substance" shall have the meaning ascribed to it in chapter
167 sixty-a of this code.

168 (m) The sentences provided herein upon conviction for a
169 violation of this article are mandatory and shall not be
170 subject to suspension or probation: *Provided*, That the
171 court may apply the provisions of article eleven-a, chapter
172 sixty-two of this code to a person sentenced or committed to
173 a term of one year or less.

174 (n) The reenactment of this section in the regular session
175 of the Legislature during the year one thousand nine
176 hundred eighty-three, shall not in any way add to or
177 subtract from the elements of the offenses set forth herein
178 and earlier defined in the prior enactment of this section.

**§17C-5-7. Refusal to submit to tests; revocation of license or
privilege; consent not withdrawn if person
arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest as specified in section four
2 of this article refuses to submit to any secondary chemical
3 test, the tests shall not be given: *Provided*, That prior to

4 such refusal, the person is given a written statement
5 advising him that his refusal to submit to the secondary test
6 finally designated will result in the revocation of his license
7 to operate a motor vehicle in this state for a period of at least
8 one year and up to life. If a person initially refuses to submit
9 to the designated secondary chemical test after being
10 informed in writing of the consequences of such refusal, he
11 shall be informed orally and in writing that after fifteen
12 minutes said refusal shall be deemed to be final and the
13 arresting officer shall after said period of time expires have
14 no further duty to provide the person with an opportunity to
15 take the secondary test. The officer shall within forty-eight
16 hours of such refusal, sign and submit to the commissioner
17 of motor vehicles a written statement of the officer that (1)
18 he had reasonable grounds to believe such person had been
19 driving a motor vehicle in this state while under the
20 influence of alcohol, controlled substances or drugs; (2)
21 such person was lawfully placed under arrest for an offense
22 relating to driving a motor vehicle in this state while under
23 the influence of alcohol, controlled substances or drugs; (3)
24 such person refused to submit to the secondary chemical
25 test finally designated in the manner provided in section
26 four of this article; and (4) such person was given a written
27 statement advising him that his license to operate a motor
28 vehicle in this state would be revoked for a period of at least
29 one year and up to life if he refused to submit to the
30 secondary test finally designated in the manner provided in
31 section four of this article. The signing of the statement
32 required to be signed by this section shall constitute an oath
33 or affirmation by the person signing such statement that the
34 statements contained therein are true and that any copy
35 filed is a true copy. Such statement shall contain upon its
36 face a warning to the officer signing that to willfully sign a
37 statement containing false information concerning any
38 matter or thing, material, or not material, is false swearing
39 and is a misdemeanor. Upon receiving the statement the
40 commissioner shall make and enter an order revoking such
41 person's license to operate a motor vehicle in this state for
42 the period prescribed by this section.

43 For the first refusal to submit to the designated secondary
44 chemical test, the commissioner shall make and enter an
45 order revoking such person's license to operate a motor

46 vehicle in this state for a period of one year. If the
47 commissioner has previously revoked the person's license
48 under the provisions of this section, the commissioner shall,
49 for the refusal to submit to the designated secondary
50 chemical test, make and enter an order revoking such
51 person's license to operate a motor vehicle in this state for a
52 period of ten years: *Provided*, That the license may be
53 reissued in five years in accordance with the provisions of
54 section three, article five-a of this chapter. If the
55 commissioner has previously revoked the person's license
56 more than once under the provisions of this section, the
57 commissioner shall, for the refusal to submit to the
58 designated secondary chemical test, make and enter an
59 order revoking such person's license to operate a motor
60 vehicle in this state for a period of life: *Provided*, That the
61 license may be reissued in ten years in accordance with the
62 provisions of section three, article five-a of this chapter. A
63 copy of each such order shall be forwarded to such person
64 by registered or certified mail, return receipt requested, and
65 shall contain the reasons for the revocation and shall
66 specify the revocation period imposed pursuant to this
67 section. No such revocation shall become effective until ten
68 days after receipt of the copy of such order. Any person who
69 is unconscious or who is otherwise in a condition rendering
70 him incapable of refusal, shall be deemed not to have
71 withdrawn his consent for a test of his blood, breath or
72 urine as provided in section four of this article and the test
73 may be administered although such person is not informed
74 that his failure to submit to the test will result in the
75 revocation of his license to operate a motor vehicle in this
76 state for the period provided for in this section.

77 A revocation hereunder shall run concurrently with the
78 period of any suspension or revocation imposed in
79 accordance with other provisions of this code and growing
80 out of the same incident which gave rise to the arrest for
81 driving a motor vehicle while under the influence of
82 alcohol, controlled substances or drugs and the subsequent
83 refusal to undergo the test finally designated in accordance
84 with the provisions of section four of this article.

85 (b) For the purposes of this section, where reference is
86 made to previous suspensions or revocations under this
87 section, the following types of suspensions or revocations

88 shall also be regarded as suspensions or revocations under
89 this section: --

90 (1) Any suspension or revocation on the basis of a
91 conviction under a municipal ordinance of another state or
92 a statute of the United States or of any other state of an
93 offense which has the same elements as an offense described
94 in section two of this article, for conduct which occurred on
95 or after June tenth, one thousand nine hundred eighty-
96 three; and

97 (2) Any revocation under the provisions of section one
98 or two, article five-a of this chapter, for conduct which
99 occurred on or after June tenth, one thousand nine hundred
100 eighty-three.

101 (c) A person whose license to operate a motor vehicle in
102 this state has been revoked shall be afforded an opportunity
103 to be heard, in accordance with the provisions of section
104 two, article five-a of this chapter.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION
AND REVOCATION OF LICENSES FOR DRIVING
UNDER THE INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR DRUGS.**

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.

§17C-5A-2. Hearing; revocation; review.

§17C-5A-3. Safety and treatment program; reissuance of license.

**§17C-5A-1. Implied consent to administrative procedure;
revocation for driving under the influence of
alcohol, controlled substances or refusal to
submit to secondary chemical test.**

1 (a) Any person who is licensed to operate a motor
2 vehicle in this state and who drives a motor vehicle in this
3 state shall be deemed to have given his consent by the
4 operation thereof, subject to the provisions of this article, to
5 the procedure set forth in this article for the determination
6 of whether his license to operate a motor vehicle in this state
7 should be revoked because he did drive a motor vehicle
8 while under the influence of alcohol, controlled substances
9 or drugs, or combined influence of alcohol or controlled
10 substances or drugs, or did drive a motor vehicle while
11 having an alcoholic concentration in his blood of ten

12 hundredths of one percent or more, by weight, or did refuse
13 to submit to any designated secondary chemical test.

14 (b) Any law-enforcement officer arresting a person for
15 an offense described in section two, article five of this
16 chapter or for an offense described in a municipal
17 ordinance which has the same elements as an offense
18 described in said section two of article five, shall take the
19 person's license at the time of arrest and issue a temporary
20 license, to be prescribed by the department of motor
21 vehicles, pending a request for an administrative hearing,
22 and shall report to the commissioner of the department of
23 motor vehicles by written statement within forty-eight
24 hours the name and address of the person so arrested. Such
25 report shall include the specific offense with which the
26 person is charged, and, if applicable, a copy of the results of
27 any secondary tests of blood, breath or urine. The signing of
28 the statement required to be signed by this subsection shall
29 constitute an oath or affirmation by the person signing such
30 statement that the statements contained therein are true
31 and that any copy filed is a true copy. Such statement shall
32 contain upon its face a warning to the officer signing that to
33 willfully sign a statement containing false information
34 concerning any matter or thing, material or not material, is
35 false swearing and is a misdemeanor.

36 (c) If, upon examination of the written statement of the
37 officer and the tests results described in subsection (b) of
38 this section, the commissioner shall determine that a person
39 was arrested for an offense described in section two, article
40 five of this chapter or for an offense described in a
41 municipal ordinance which has the same elements as an
42 offense described in said section two of article five, and that
43 the results of the tests indicate that at the time the test or
44 tests were administered the person had, in his blood, an
45 alcohol concentration of ten hundredths of one percent or
46 more, by weight, or at the time the person was arrested he
47 was under the influence of alcohol, controlled substances or
48 drugs, the commissioner shall make and enter an order
49 revoking such person's license to operate a motor vehicle in
50 this state. A copy of such order shall be forwarded to such
51 person by registered or certified mail, return receipt
52 requested, and shall contain the reasons for the revocation
53 and the revocation periods provided for in section two of

54 this article. No revocation shall become effective until ten
55 days after receipt of a copy of such order.

§17C-5A-2. Hearing; revocation; review.

1 (a) Upon the written request of a person whose license
2 to operate a motor vehicle in this state has been revoked
3 under the provisions of section one of this article or section
4 seven, article five of this chapter, the commissioner of
5 motor vehicles shall extend the temporary license issued
6 under section one of this article, if applicable, and afford
7 the person an opportunity to be heard. Such written request
8 must be filed with the commissioner in person or by
9 registered or certified mail, return receipt requested, within
10 ten days after receipt of a copy of the order of revocation.
11 The hearing shall be before said commissioner or a hearing
12 examiner retained by the commissioner who shall rule on
13 evidentiary issues and submit proposed findings of fact and
14 conclusions of law for the consideration of said
15 commissioner and all of the pertinent provisions of article
16 five, chapter twenty-nine-a of this code shall apply:
17 *Provided*, That in the case of a resident of this state the
18 hearing shall be held in the county wherein the arrest was
19 made in this state unless the commissioner or his authorized
20 deputy or agent and such person agree that the hearing may
21 be held in some other county.

22 (b) Any such hearing shall be held within twenty days
23 after the date upon which the commissioner received the
24 timely written request therefor, unless there is a
25 postponement or continuance. The commissioner may
26 postpone or continue any hearing on his own motion, or
27 upon application for each person for good cause shown. The
28 commissioner shall adopt and implement by a procedural
29 rule written policies governing the postponement or
30 continuance of any such hearing on his own motion or for
31 the benefit of any law-enforcement officer or any person
32 requesting such hearing, and such policies shall be enforced
33 and applied to all parties equally. For the purpose of
34 conducting such hearing, the commissioner shall have the
35 power and authority to issue subpoenas and subpoenas
36 duces tecum in accordance with the provisions of section
37 one, article five, chapter twenty-nine-a of this code:
38 *Provided*, That the notice of hearing to the appropriate

39 law-enforcement officers by registered or certified mail,
40 return receipt requested, shall constitute a subpoena to
41 appear at such hearing without the necessity of payment of
42 fees by the department of motor vehicles. All subpoenas and
43 subpoenas duces tecum shall be issued and served within
44 the time and for the fees and shall be enforced, as specified
45 in section one, article five of said chapter twenty-nine-a,
46 and all of the said section one provisions dealing with
47 subpoenas and subpoenas duces tecum shall apply to
48 subpoenas and subpoenas duces tecum issued for the
49 purpose of a hearing hereunder.

50 (c) Law-enforcement officers shall be compensated for
51 the time expended in their travel and appearance before the
52 commissioner by the law-enforcement agency by whom
53 they are employed at their regular rate if they are scheduled
54 to be on duty during said time or at their regular overtime
55 rate if they are scheduled to be off-duty during said time.

56 (d) The principal question at such hearing shall be
57 whether the person did drive a motor vehicle while under
58 the influence of alcohol, controlled substances or drugs, or
59 did drive a motor vehicle while having an alcohol
60 concentration in his blood of ten hundredths of one percent
61 or more, by weight, or did refuse to submit to the designated
62 secondary chemical test.

63 The commissioner may propose a legislative rule in
64 compliance with the provisions of article three, chapter
65 twenty-nine-a of this code, which rule may provide that if a
66 person accused of driving a motor vehicle while under the
67 influence of alcohol, controlled substances or drugs, or
68 accused of driving a motor vehicle while having an alcohol
69 concentration in his blood of ten hundredths of one percent
70 or more, by weight, intends to challenge the results of any
71 secondary chemical test of blood, breath or urine, or intends
72 to cross-examine the individual or individuals who
73 administered the test or performed the chemical analysis,
74 he shall, within an appropriate period of time prior to the
75 hearing, notify the commissioner in writing of such
76 intention. Such rule may provide that when there is a
77 failure to comply with the notice requirement, the results of
78 the secondary test, if any, shall be admissible as though the
79 person and the commissioner had stipulated the
80 admissibility of such evidence. Any such rule shall provide

81 that the rule shall not be invoked in the case of a person who
82 is not represented by counsel unless the communication
83 from the commissioner to the person establishing a time and
84 place for the hearing also informed the person of the
85 consequences of his failure to timely notify the
86 commissioner of his intention to challenge the results of the
87 secondary chemical test or cross-examine the individual or
88 individuals who administered the test or performed the
89 chemical analysis.

90 (e) In the case of a hearing wherein a person is accused
91 of driving a motor vehicle while under the influence of
92 alcohol, controlled substances or drugs, or accused of
93 driving a motor vehicle while having an alcoholic
94 concentration in his blood of ten hundredths of one percent
95 or more, by weight, the commissioner shall make specific
96 findings as to (1) whether the arresting law-enforcement
97 officer had reasonable grounds to believe such person to
98 have been driving while under the influence of alcohol,
99 controlled substances or drugs, or while having an alcoholic
100 concentration in his blood of ten hundredths of one percent
101 or more, by weight, (2) whether such person was lawfully
102 placed under arrest for an offense involving driving under
103 the influence of alcohol, controlled substances or drugs, and
104 (3) whether the tests, if any, were administered in
105 accordance with the provisions of this article and article
106 five of this chapter.

107 (f) If, in addition to a finding that the person did drive a
108 motor vehicle while under the influence of alcohol,
109 controlled substances or drugs, or did drive a motor vehicle
110 while having an alcoholic concentration in his blood of ten
111 hundredths of one percent or more, by weight, the
112 commissioner also finds by a preponderance of the evidence
113 that the person when so driving did an act forbidden by law
114 or failed to perform a duty imposed by law, which act or
115 failure proximately caused the death of a person and was
116 committed in reckless disregard of the safety of others, and,
117 if the commissioner further finds that the influence of
118 alcohol, controlled substances or drugs or the alcoholic
119 concentration in the blood was a contributing cause to the
120 death, the commissioner shall revoke the person's license
121 for a period of ten years: *Provided*, That if the commissioner
122 has previously suspended or revoked the person's license

123 under the provisions of this section or section one of this
124 article, the period of revocation shall be for the life of such
125 person.

126 (g) If, in addition to a finding that the person did drive a
127 motor vehicle while under the influence of alcohol,
128 controlled substances or drugs, or did drive a motor vehicle
129 while having an alcoholic concentration in his blood of ten
130 hundredths of one percent or more, by weight, the
131 commissioner also finds by a preponderance of the evidence
132 that the person when so driving did an act forbidden by law
133 or failed to perform a duty imposed by law, which act or
134 failure proximately caused the death of a person, the
135 commissioner shall revoke the person's license for a period
136 of five years: *Provided*, That if the commissioner has
137 previously suspended or revoked a person's license under
138 the provisions of this section or section one of this article,
139 the period of revocation shall be for the life of such person.

140 (h) If, in addition to a finding that the person did drive a
141 motor vehicle while under the influence of alcohol,
142 controlled substances or drugs, or did drive a motor vehicle
143 while having an alcoholic concentration in his blood of ten
144 hundredths of one percent or more, by weight, the
145 commissioner also finds by a preponderance of the evidence
146 that the person when so driving did an act forbidden by law
147 or failed to perform a duty imposed by law, which act or
148 failure proximately caused bodily injury to a person other
149 than himself, the commissioner shall revoke the person's
150 license for a period of two years: *Provided*, That if the
151 commissioner has previously suspended or revoked the
152 person's license under the provisions of this section or
153 section one of this article, the period of revocation shall be
154 ten years: *Provided, however*, That if the commissioner has
155 previously suspended or revoked the person's license more
156 than once under the provisions of this section or section one
157 of this article, the period of revocation shall be for the life of
158 such person.

159 (i) If the commissioner finds by a preponderance of the
160 evidence that the person did drive a motor vehicle while
161 under the influence of alcohol, controlled substances or
162 drugs, or did drive a motor vehicle while having an
163 alcoholic concentration in his blood of ten hundredths of
164 one percent or more, by weight, or finds that the person,

165 being an habitual user of narcotic drugs or amphetamines or
166 any derivative thereof, did drive a motor vehicle, or finds
167 that the person knowingly permitted his vehicle to be
168 driven by another person who was under the influence of
169 alcohol, controlled substances or drugs, or knowingly
170 permitted his vehicle to be driven by a person who had an
171 alcoholic concentration in his blood of ten hundredths of
172 one percent or more, by weight, the commissioner shall
173 revoke the person's license for a period of six months:
174 *Provided*, That if the commissioner has previously
175 suspended or revoked the person's license under the
176 provisions of this section or section one of this article, the
177 period of revocation shall be ten years: *Provided, however*,
178 That if the commissioner has previously suspended or
179 revoked the person's license more than once under the
180 provisions of this section or section one of this article, the
181 period of revocation shall be for the life of such person.

182 (j) For purposes of this section, where reference is made
183 to previous suspensions or revocations under this section,
184 the following types of criminal convictions or
185 administrative suspensions or revocations shall also be
186 regarded as suspensions or revocations under this section or
187 section one of this article:

188 (1) Any administrative revocation under the provisions
189 of the prior enactment of this section for conduct which
190 occurred on or after the first day of September, one
191 thousand nine hundred eighty-one, and prior to the
192 effective date of this section;

193 (2) Any conviction under the provisions of a prior
194 enactment of section two, article five of this chapter for
195 conduct which occurred within a period of five years
196 immediately preceding the first day of September, one
197 thousand nine hundred eighty-one;

198 (3) Any suspension or revocation on the basis of a
199 conviction under a municipal ordinance of another state or
200 a statute of the United States or of any other state of an
201 offense which has the same elements as an offense described
202 in section two, article five of this chapter, for conduct which
203 occurred on or after June tenth, one thousand nine hundred
204 eighty-three;

205 (4) Any suspension or revocation on the basis of a
206 conviction under a statute of the United States or of any

207 other state of an offense which has the same elements as an
208 offense described in section two, article five of this chapter,
209 or a prior enactment of said section, for conduct which
210 occurred within a period of five years immediately
211 preceding the first day of September, one thousand nine
212 hundred eighty-one;

213 (5) Any revocation under the provisions of section
214 seven, article five of this chapter, for conduct which
215 occurred on or after June tenth, one thousand nine hundred
216 eighty-three.

217 (k) In the case of a hearing wherein a person is accused
218 of refusing to submit to a designated secondary test, the
219 commissioner shall make specific findings as to (1) whether
220 the arresting law-enforcement officer had reasonable
221 grounds to believe such person had been driving a motor
222 vehicle in this state while under the influence of alcohol,
223 controlled substances or drugs, (2) whether such person was
224 lawfully placed under arrest for an offense relating to
225 driving a motor vehicle in this state while under the
226 influence of alcohol, controlled substances or drugs, (3)
227 whether such person refused to submit to the secondary test
228 finally designated in the manner provided in section four,
229 article five of this chapter, and (4) whether such person had
230 been given a written statement advising him that his license
231 to operate a motor vehicle in this state would be revoked for
232 at least one year and up to life if he refused to submit to the
233 test finally designated in the manner provided in section four,
234 article five of this chapter.

235 (l) If the commissioner finds by a preponderance of the
236 evidence that (1) the arresting law-enforcement officer had
237 reasonable grounds to believe such person had been driving
238 a motor vehicle in this state while under the influence of
239 alcohol, controlled substances or drugs, (2) such person was
240 lawfully placed under arrest for an offense relating to
241 driving a motor vehicle in this state while under the
242 influence of alcohol, controlled substances or drugs, (3)
243 such person refused to submit to the secondary chemical
244 test finally designated, and (4) such person had been given a
245 written statement advising him that his license to operate a
246 motor vehicle in this state would be revoked for a period of
247 at least one year and up to life if he refused to submit to the
248 test finally designated, the commissioner shall revoke the
249 person's license to operate a motor vehicle in this state for

250 the periods specified in section seven, article five of this
251 chapter.

252 (m) If the commissioner finds to the contrary with
253 respect to the above issues, he shall rescind his earlier order
254 of revocation or shall reduce the order of revocation to the
255 appropriate period of revocation under this section, or
256 section seven, article five of this chapter.

257 A copy of the commissioner's order made and entered
258 following the hearing shall be served upon such person by
259 registered or certified mail, return receipt requested.
260 During the pendency of any such hearing, the revocation of
261 the person's license to operate a motor vehicle in this state
262 shall be stayed.

263 If the commissioner shall after hearing make and enter an
264 order affirming his earlier order of revocation such person
265 shall be entitled to judicial review as set forth in chapter
266 twenty-nine-a of this code, except that the commissioner
267 shall not stay enforcement of the order; and, pending such
268 appeal, the court may grant a stay or supersedeas of such
269 order only upon motion and hearing, and a finding by the
270 court upon evidence presented, that there is a substantial
271 probability that the appellant shall prevail upon the merits,
272 and the appellant will suffer irreparable harm if such order
273 is not stayed: *Provided*, That in no event shall the stay or
274 supersedeas of such order exceed thirty days.

275 (n) In any revocation pursuant to this section, if the
276 driver whose license is revoked had not reached his or her
277 nineteenth birthday at the time of the conduct for which the
278 license is revoked, the driver's license shall be revoked until
279 the driver's nineteenth birthday, or the applicable statutory
280 period of revocation prescribed by this section, whichever is
281 longer.

282 (o) Funds for this section's hearing and appeal process
283 may be provided from the drunk driving prevention fund, as
284 created by section sixteen, article fifteen, chapter eleven of
285 this code, upon application for such funds to the
286 commission on drunk driving prevention.

**§17C-5A-3. Safety and treatment program; reissuance of
license.**

1 (a) The department of motor vehicles, in cooperation
2 with the department of health, the division of alcoholism
3 and drug abuse, shall establish by rule and regulation a

4 comprehensive safety and treatment program for persons
5 whose licenses have been revoked under the provision of
6 this article, or section seven, article five of this chapter, or
7 subsection (6), section three, article five, chapter seventeen-
8 b of this code, and shall likewise establish the minimum
9 qualifications for persons conducting the safety and
10 treatment program. The program shall include, but not be
11 limited to, treatment of alcoholism, alcohol and drug abuse,
12 psychological counseling, educational courses on the
13 dangers of alcohol and drugs as they relate to driving,
14 defensive driving, or other safety driving instruction, and
15 other programs designed to properly educate, train and
16 rehabilitate the offender.

17 (b) (1) The department of motor vehicles, in
18 cooperation with the department of health, the division of
19 alcoholism and drug abuse, shall provide for the
20 preparation of an educational and treatment program for
21 each person whose license has been revoked under the
22 provisions of this article or section seven, article five of this
23 chapter, or subsection (6), section five, article three, chapter
24 seventeen-b of this code, which shall contain the following:
25 (A) A listing and evaluation of the offender's prior traffic
26 record; (B) characteristics and history of alcohol or drug
27 use, if any; (C) his amenability to rehabilitation through the
28 alcohol safety program; and (D) a recommendation as to
29 treatment or rehabilitation, and the terms and conditions of
30 such treatment or rehabilitation. The program shall be
31 prepared by persons knowledgeable in the diagnosis of
32 alcohol or drug abuse and treatment. The cost of the
33 program shall be paid out of fees established by the
34 commissioner of motor vehicles in cooperation with the
35 department of health, division of alcohol and drug abuse.
36 These fees shall be deposited in a special account
37 administering the program, to be designated the "driver's
38 rehabilitation fund."

39 (2) The commissioner, after giving due consideration to
40 the program developed for the offender, shall prescribe the
41 necessary terms and conditions for the reissuance of the
42 license to operate a motor vehicle in this state revoked
43 under this article, or section seven, article five of this
44 chapter, or subsection (6), section five, article three, chapter
45 seventeen-b of this code, which shall include successful

46 completion of the educational, treatment or rehabilitation
47 program, subject to the following:

48 (A) When the period of revocation is six months, the
49 license to operate a motor vehicle in this state shall not be
50 reissued until (i) at least ninety days have elapsed from the
51 date of the initial revocation during which time the
52 revocation was actually in effect, (ii) the offender has
53 successfully completed the program, (iii) all costs of the
54 program and administration have been paid, and (iv) all
55 costs assessed as a result of a revocation hearing have been
56 paid.

57 (B) When the period of revocation is for a period of
58 years, the license to operate a motor vehicle in this state
59 shall not be reissued until (i) at least one half of such time
60 period has elapsed from the date of the initial revocation
61 during which time the revocation was actually in effect, (ii)
62 the offender has successfully completed the program, (iii)
63 all costs of the program and administration have been paid,
64 and (iv) all costs assessed as a result of a revocation hearing
65 have been paid.

66 (C) When the period of revocation is for life, the license
67 to operate a motor vehicle in this state shall not be reissued
68 until (i) at least ten years have elapsed from the date of the
69 initial revocation, during which time the revocation was
70 actually in effect, (ii) the offender has successfully
71 completed the program, (iii) all costs of the program and
72 administration have been paid, and (iv) all costs assessed as
73 a result of a revocation hearing have been paid.

74 (D) Notwithstanding any provision of this code or any
75 rule or regulation, the department of health, division of
76 alcohol and drug abuse, when certifying that a person has
77 successfully completed a safety and treatment program,
78 shall only have to certify that such person has successfully
79 completed the program.

CHAPTER 58

(Com. Sub. for S. B. 403—By Senator Boettner, Mr. Tonkovich, Mr. President,
Senators Tomblin, Sharpe, Spears, Parker, Chernenko, Karras, Ash and Jones)

[Passed March 9, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to repeal sections nine, eleven, eleven-a, eleven-b;

eleven-c, eleven-d and eleven-e, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections six and six-a of said article one; to amend and reenact sections three and four, article two of said chapter five-b; to further amend said article two by adding thereto eight new sections, designated sections five, six, six-a, six-b, six-c, six-d, six-e and seven; to further amend said chapter five-b by adding thereto four new articles, designated articles two-a, two-b, two-c and five; to amend and reenact section three, article three of said chapter; and to further amend said article three by adding thereto a new section, designated section five-a; to amend and reenact section five, article four of said chapter five-b; to amend and reenact sections three, five, six, nine, eleven and thirteen, article one, chapter five-c; to amend said code by adding thereto a new chapter, designated chapter five-e; to amend and reenact sections one, two, three, four, eight, eleven, twelve, thirteen, fourteen and fifteen, article twelve, chapter seven; to further amend said article twelve by adding thereto a new section, designated section three-a; to amend article thirteen, chapter eleven, by adding thereto a new section, designated section thirty; to amend article thirteen-a of said chapter by adding thereto a new section, designated section twenty-three; to amend article twenty-three of said chapter by adding thereto a new section, designated section twenty-four; to amend article twenty-four of said chapter by adding thereto a new section, designated section twenty-two; to amend chapter eighteen by adding thereto two new articles, designated articles twenty-six-c and twenty-six-d; to amend article six, chapter twenty-nine by adding thereto two new sections, designated sections seventeen-a and seventeen-b; to amend and reenact sections six, seven, seven-b, eight, nine and twenty-three, article fifteen, chapter thirty-one; to amend and reenact section four, article eighteen-b of said chapter; and to amend chapter thirty-one by adding thereto a new article, designated article nineteen, all relating to economic development generally; department of commerce divisions; continuation of civil service coverage; program and policy action statement; submission to joint committee on government and finance; office of community and industrial development divisions; feasibility studies; reports to the Legislature; definitions; division of research and strategic

planning; power and duties; division of small business development; purposes; powers and duties; regional small business innovation centers; location; authority; state small business innovation center board created; membership; regional center director; functions and duties; trade secrets documentary materials; commercial or financial information; confidentiality; rules and regulations; low-interest loans to private companies entering into the process of converting West Virginia coal to coke; funding; higher education-industry partnership; legislative purpose; university-industry research and development centers; collaboration and technical assistance; Vandalia partnership program; Vandalia partnership fund; grant applications; eligibility and criteria; board of trustees; grants; authority; director appointment; annual report; enterprise zone authority; legislative purpose; definitions; authority created; members, appointment and terms; powers; duties; tax exemptions; administrative regulation exemptions; economically depressed areas; designation; enterprise zone requirements for creation; designation; conditions for preference of enterprise zones; office of federal procurement assistance; legislative findings; office created; appointment of director; compensation; rules and regulations; duties and powers; financial and technical assistance; West Virginia export development authority; creation and purposes; duties; labor-management council; compensation; independent agencies; employment; expenses of council; employee ownership assistance program; definitions; technical assistance; financial assistance; applications criteria; administration; nondiscrimination; West Virginia industry assistance corporation; definitions; creation; directors; number; appointment in terms of office; compensation; interest in competing business for bidding; corporation powers; principal office; account book; directors' oath of office; authority of board of investments; West Virginia capital company; venture capital authority; purposes; definitions; rules and regulations; certification; minimum standards; tax credit; recaptures; unqualified investments; application requirements; disclaimer of state liability; qualified investments; investment restrictions; conflict of interest; investment reporting and record keeping; examination;

decertification; county and municipal development authorities; establishment authorized; name; exceptions; purposes; management and control; appointment in terms of members; vacancies; removal of members; management and control of municipal authority; appointment in terms of members; vacancies; removal of members; members qualification; incurring indebtedness; creditors' rights; participation and appropriations authorized; property transfers and conveyances; county commission contribution; municipalities and others; funds and accounts; audit and examination of books, records and accounts; property sale or lease; reversion of assets upon dissolution; employees covered by workers' compensation; liberal construction; business and occupation tax credit for coal coking facilities; regulations; severance tax credit for coal coking facilities; regulations; business franchise tax credit for coal coking facilities; regulations; corporation net income tax credit for coal coking facilities; regulations; institute for public affairs; directors, administrative control and supervision; institute for international trade development; creation and purpose; civil service system apprenticeship program; advisory board; West Virginia economic development authority; general powers; loans to industrial development agencies for industrial development projects; loans for construction of electrical power generating facilities, natural gas transmission; coal processing plants, other energy projects; export development, farm development, job development, forest development projects; loan application requirements; hearings; equipment loans; governing body; organization and meeting; quorum; powers; mortgage and industrial development investment pool; funds for investment of industrial development; amount of funds available; interest rates specified; West Virginia community infrastructure authority; short title; legislative findings and purpose; definitions; authority created; board; organization; appointment of board members; term of office, compensation and expenses; duties and responsibilities of director and staff; community infrastructure project financing; loans, bond purchases from counties and municipalities subject to terms of loan or bond purchase agreement; powers, duties and responsibilities; authority

empowered to issue community infrastructure revenue bonds, renewal notes and refunding bond; requirements and manner of issuance; trustee for bond holder; contents of trust agreement; legal remedies of bond holders and trustee; bonds and notes not debt of state, county or municipality; expenses; use of funds; restrictions; investment of funds; reports to governor and Legislature; lawful investment; purchase and cancellation of notes or bond; refunding bonds; exemptions from taxation; financial interests and contracts prohibited; criminal penalty; meetings and records to be public; liberal construction; and severability.

Be it enacted by the Legislature of West Virginia:

That sections nine, eleven, eleven-a, eleven-b, eleven-c, eleven-d and eleven-e, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections six and six-a of said article one be amended and reenacted; that sections three and four, article two of said chapter five-b be amended and reenacted; that said article two be further amended by adding thereto eight new sections, designated sections five, six, six-a, six-b, six-c, six-d, six-e and seven; that said chapter five-b be further amended by adding thereto four new articles, designated articles two-a, two-b, two-c and five; that section three, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section five-a; that section five, article four of said chapter be amended and reenacted; that sections three, five, six, nine, eleven and thirteen, article one, chapter five-c be amended and reenacted; that said code be amended by adding thereto a new chapter, designated chapter five-e; that sections one, two, three, four, eight, eleven, twelve, thirteen, fourteen and fifteen, article twelve, chapter seven be amended and reenacted; that said article twelve be further amended by adding thereto a new section, designated section three-a; that article thirteen, chapter eleven be amended by adding thereto a new section, designated section thirty; that article thirteen-a of said chapter be amended by adding thereto a new section, designated section twenty-three; that article twenty-three of said chapter be amended by adding thereto a new section, designated section twenty-four; that article twenty-four of said chapter be amended by adding thereto a new section, designated section twenty-two; that

chapter eighteen be amended by adding thereto two new articles, designated articles twenty-six-c and twenty-six-d; that article six, chapter twenty-nine be amended by adding thereto two new sections, designated sections seventeen-a and seventeen-b; that sections six, seven, seven-b, eight, nine and twenty-three, article fifteen, chapter thirty-one be amended and reenacted; that section four, article eighteen-b of said chapter be amended and reenacted; and that said chapter thirty-one be further amended by adding thereto a new article, designated article nineteen, all to read as follows:

Chapter

- 5B. Economic Development Act of 1985.**
- 5C. Basic Assistance for Industry and Trade.**
- 5E. Venture Capital Authority.**
- 7. County Commissions and Officers.**
- 11. Taxation.**
- 18. Education.**
- 29. Miscellaneous Boards and Officers.**
- 31. Corporations.**

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article.

- 1. Department of Commerce.**
- 2. Office of Community and Industrial Development.**
- 2A. Higher Education-Industry Partnerships.**
- 2B. Enterprise Zone Authority.**
- 2C. Office of Federal Procurement Assistance.**
- 3. West Virginia Export Development Authority.**
- 4. Labor-Management Council.**
- 5. Employee Ownership Assistance Program.**

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-6. Divisions created; continuation of civil service coverage for persons employed in the former office of economic and community development and the department of natural resources.

§5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.

1 There is hereby created within the department of
2 commerce:

- 3** (1) The division of tourism;
- 4** (2) The division of advertising and promotion;
- 5** (3) The division of product marketing; and
- 6** (4) The division of parks and recreation.

7 Each said division shall be under the control of a director
8 to be appointed by the commissioner who shall be qualified
9 by reason of exceptional training and experience in the field
10 of activities of his respective division and shall serve at the
11 will and pleasure of the commissioner. The commissioner
12 shall have authority to establish such additional divisions
13 as may be determined necessary to carry out the purposes of
14 this chapter.

15 All persons employed on the effective date of this chapter
16 in the governor's office of economic and community
17 development and the division of parks and recreation in the
18 department of natural resources, the duties and functions of
19 which have been transferred either to the department of
20 commerce or the office of community and industrial
21 development created by virtue of the provisions of the
22 economic development act of one thousand nine hundred
23 eighty-five, are hereby assigned and transferred to either
24 the department of commerce or the office of community and
25 industrial development, as the case may be, and no person's
26 employment shall be eliminated, nor shall any person's
27 salary, benefits or position classification be reduced or
28 diminished by reason of the provisions of this chapter. All
29 persons affected shall retain their coverage under the civil
30 service system and all matters relating to job classification,
31 job tenure, salary and conditions of employment shall
32 remain in force and effect from and after the effective date
33 of this chapter: *Provided*, That nothing herein shall
34 prohibit the disciplining or dismissal of any employee for
35 cause, or the dismissal of any nonclassified supervising
36 employees appointed by the governor and serving at the will
37 and pleasure of the governor.

**§5B-1-6a. Program and policy action statement; submission to
joint committee on government and finance.**

1 The department of commerce, the office of community
2 and industrial development and any other authorities,
3 boards, commissions, corporations or other entities created
4 or amended under chapter five-b and articles twenty-six-c
5 and twenty-six-d, chapter eighteen of this code, shall
6 prepare and submit to the joint committee on government
7 and finance on/or before the first day of December, one
8 thousand nine hundred eighty-six, and each year
9 thereafter, a program and policy action statement which

10 shall outline in specific detail according to the purpose,
 11 powers and duties of the office or division, its procedure,
 12 plan and program to be used in accomplishing its goals and
 13 duties as required under this article.

**ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL
 DEVELOPMENT.**

§5B-2-3. Divisions created.

§5B-2-4. Office to conduct feasibility studies; reports to the Legislature;
 definitions.

§5B-2-5. Division of research and strategic planning; powers and duties.

§5B-2-6. Division of small business development; purposes; powers and duties
 generally.

§5B-2-6a. Regional small business innovation centers; locations; authority.

§5B-2-6b. State small business innovation center board created; membership;
 regional center directors.

§5B-2-6c. Functions and duties of regional centers.

§5B-2-6d. Documentary materials concerning trade secrets; commercial or
 financial information; confidentiality.

§5B-2-6e. Rules and regulations.

§5B-2-7. Authority of director to provide low-interest loans to private
 companies entering into the process of converting West Virginia
 coal to coke; funding.

§5B-2-3. Divisions created.

1 There are hereby created within the office of commun-
 2 ity and industrial development:

- 3 (1) The division of community development;
- 4 (2) The division of financial and technical assistance;
- 5 (3) The division of administration;
- 6 (4) The division of industrial development;
- 7 (5) The division of research and strategic planning;
- 8 (6) The division of employment and training;
- 9 (7) The division of small business development; and
- 10 (8) The division of small business.

11 Each said division shall be under the control of a director
 12 to be appointed by the director of the office of community
 13 and industrial development and who shall be qualified by
 14 reason of exceptional training and experience in the field of
 15 activities of his respective division and shall serve at the
 16 will and pleasure of the director.

17 The governor is hereby authorized to establish and
 18 maintain foreign trade offices, personnel for same and
 19 attendant services.

§5B-2-4. Office to conduct certain feasibility studies; reports to the Legislature; definitions.

1 The director shall assign to an appropriate division of
2 the office the duty and responsibility to conduct studies to
3 determine the feasibility of establishing programs or
4 recommending legislation for the establishment of
5 programs relative to coal processing, farm development,
6 forest resources, jobs development and a technical
7 education system for new industry. Such division may
8 conduct inquiries and hold hearings regarding such
9 programs in order to provide interested persons the
10 opportunity to comment, and shall report to the Legislature
11 regarding its findings and policies with respect to each of
12 these areas not later than the first day of the regular session
13 of the Legislature in the year one thousand nine hundred
14 eighty-seven, and every two years thereafter.

15 For the purpose of this section:

16 (a) The term "coal processing" means the process by
17 which coal is converted to coke of the non-by-product
18 variety;

19 (b) The term "farm development" means the promotion,
20 encouragement and development of farming and
21 farmlands;

22 (c) The term "forest resources development" means a
23 program to: (i) Improve the business climate for forest
24 industries and the general awareness of forestry potential;
25 (ii) develop a strong state forestry agency; (iii) improve
26 forest resources data; (iv) improve the transportation
27 system for wood products; and (v) improve forestry
28 knowledge and practices of private landowners;

29 (d) The term "jobs development" means a program to
30 maintain existing employment, and to promote new
31 employment opportunities for the people of this state,
32 particularly in the areas of high unemployment; and

33 (e) The term "technical education system for new
34 industry training" means a program to contract, provide
35 grants, loans or other assistance, establish reimbursements
36 and otherwise educate and train the state work force, on an
37 as needed basis, for the purpose of attracting both new
38 businesses to the state and of retooling, converting or
39 otherwise modernizing existing businesses in the state; and
40 which program is to include the review, updating and

41 modernizing of the state vocational technical centers and
42 community college training programs for this purpose, so as
43 to provide immediate technical training, specific to a new
44 business or existing business.

45 The feasibility studies provided for hereunder shall be
46 performed in conjunction with either the institute of public
47 affairs provided for in article twenty-six-c, chapter
48 eighteen of this code, or the higher education industry
49 partnerships provided for in article two-a, chapter five-b of
50 this code.

§5B-2-5. Division of research and strategic planning; powers and duties.

1 (a) The division of research and strategic planning shall
2 have the following powers and duties with respect to
3 research:

4 (1) To establish as an independent entity at West
5 Virginia University in cooperation with and involving other
6 West Virginia colleges and universities a center for economic
7 research. The center shall be under the control and
8 supervision of a director, who shall be appointed by the
9 president of West Virginia University. The center shall
10 employ such staff economists or statisticians, such research
11 assistants and secretaries, each of whom shall serve on a
12 part-time basis and may be members of the faculty or staff
13 of West Virginia University or any other college or
14 university in the state. In addition, the center may employ
15 student interns.

16 (2) The center shall provide the governor's office of
17 community and industrial development, commissioner of
18 commerce, and the Legislature, with an analysis of the
19 quality of economic data pertaining to West Virginia. The
20 center shall recommend ways to obtain additional
21 information necessary to better understand the state's
22 economy and to devise better economic development
23 strategies. The center is directed to establish priorities and
24 coordinate its economic research functions with the
25 governor and the Legislature. To accomplish this purpose
26 the advisory board created for the institute of public affairs
27 in section one, article twenty-six-c, chapter eighteen of this
28 code, shall serve as the advisory board to the center. The
29 director of the center shall serve as the chairman of the
30 advisory board. The center shall publish results of its

31 research, maintain a comprehensive library with
32 supporting computer data bases and shall, upon request,
33 provide a review of the economy and major policy issues to
34 the joint committee on government and finance.

35 (3) During its first year of operation, the center shall
36 include in its research topics the desirability of establishing
37 a detailed gross state products series, modeled after the
38 national income and products accounts and the desirability
39 of constructing a periodic input/output table for the state. It
40 shall review the quality of current statistics relating to
41 employment and prices and statistics relating to poverty
42 and the distribution of income and wealth. The center may
43 study the feasibility of, and, based upon such study
44 establish a West Virginia econometric model project.

45 (4) Where deficiencies are found in existing data
46 sources, the center shall publish conclusions regarding the
47 benefits to be derived from gathering additional or better
48 information and shall make operational recommendations
49 on the best possible methods for obtaining the desired
50 information.

51 (5) The director of the center or members of its staff
52 shall meet on a regular basis with the director of the
53 governor's office of community and industrial
54 development, the commissioner of the department of
55 commerce, other officials of the department and members
56 of the Legislature to provide the results of its research and
57 to provide policy advice and analysis.

58 (6) The center shall develop and maintain an inventory
59 of research efforts of universities and colleges and other
60 institutions or businesses within the state and a register of
61 scientific and technological research facilities in the state.
62 That function may be performed by contract with the center
63 for education and research with industry of the board of
64 regents.

65 (b) The division of research and strategic planning shall
66 develop a strategic plan for the economic development of
67 the state, its regions and specific industries including
68 tourism, manufacturing, timber, agriculture and other
69 rural development, coal, oil, gas and other extractive
70 resources, retail, service, distribution and small businesses.
71 Such a plan shall emphasize a coordinated effort of the
72 public and private sector toward balanced growth for the

73 state. Such plan shall include, but is not limited to, the
74 following:

75 (1) Assessing the state's economic strengths and
76 weaknesses;

77 (2) Developing and recommending short, intermediate
78 and long-term economic goals and plans, together with
79 options;

80 (3) Identifying barriers to economic growth and
81 diversification in the state;

82 (4) Recommending implementation procedures and
83 options utilizing and maximizing existing public and
84 private mechanism;

85 (5) Fostering and supporting scientific and
86 technological research in this state in cooperation with the
87 federal government, the various offices and divisions of the
88 department of commerce and other state and local
89 governmental agencies, educational institutions, nonprofit
90 institutions and organizations, business enterprises and
91 others concerned with scientific and technological research
92 development;

93 (6) Developing a program to attract investment in
94 research and development in high technology industries;

95 (7) Conducting a series of studies to determine the
96 feasibility of constructing natural gas transmission lines,
97 electric power generating facilities and coal processing
98 plants to be owned, either in whole or in part, or to be
99 operated, either in whole or in part, by the state of West
100 Virginia; and

101 (8) Maintaining a library of research materials,
102 including computer data bases, to accomplish the goals of
103 the division.

104 The division shall, based upon the data it collects and
105 analyzes as set forth in subdivisions (1) through (8) of this
106 section, and in cooperation with the other divisions of the
107 department, develop a set of specific plans and programs,
108 and recommend to the Legislature, on an annual basis,
109 appropriate legislation to implement and carry out such
110 plans, for the purpose of effectuating the purposes of this
111 article.

**§5B-2-6. Division of small business development; purposes;
powers and duties generally.**

1 It shall be the duty of the division of small business

2 development to establish a statewide small business
3 innovation center network to be located on the campuses or
4 operated in conjunction with the colleges and universities
5 of West Virginia.

6 The director shall be responsible for the management and
7 operation of the center network, subject to the program
8 policies adopted by the center network board of directors.

9 The center network shall:

10 (a) Serve as a liaison between the department of
11 commerce and the state regional small business innovation
12 center board;

13 (b) Provide direction, guidance and assistance to
14 regional small business innovation centers;

15 (c) Conduct feasibility studies regarding the
16 establishment or certification of new regional small
17 business innovation centers;

18 (d) Conduct conferences and seminars for regional
19 small business innovation centers to promote and
20 encourage the utilization of sound and innovative
21 approaches to the discharge of the functions and duties of
22 the regional small business innovation centers; and

23 (e) Prepare and submit such reports, plans, suggestions
24 and recommendations to the department on jobs and
25 economic development as may from time to time be
26 required.

27 To the extent practicable, the director shall utilize
28 student interns and qualified new and innovative business
29 vendors, including, but not limited to, private management
30 consultants, private consulting engineers and private
31 testing laboratories, to provide services described in this
32 section.

33 The director is further authorized and empowered to
34 apply for and receive appropriations, gifts, bequests or
35 grants of money, services, material, real estate or other
36 things of value from any agency of the United States
37 government, any agency of the state of West Virginia, any
38 municipality or county within this state, any school board
39 or college or university supported in whole, or in part, by
40 this state or any other person, firm, partnership, association
41 or corporation, within or without this state, and any agency
42 of the state of West Virginia, any municipality or county
43 within this state, or any school board or college or
44 university supported in whole, or in part, by this state and is

45 hereby authorized and empowered to make appropriations
46 or grants to the regional small business innovation centers,
47 to assist in achieving the public purpose of this section. All
48 funds received by the director to carry out the provisions
49 herein shall be deposited with the state treasurer and
50 disbursed by the director to be used exclusively for carrying
51 out the provisions herein. Any appropriations, gifts,
52 bequests or grants received by the director with any
53 restriction or restrictions on the use thereof shall be
54 expended by the director in accordance with such
55 restriction or restrictions.

56 The director of the state business innovation center in
57 addition to such reports as may be required by the
58 governor's office of community and industrial development
59 shall publish an annual report by the first day of December
60 of each year for distribution to the governor, the
61 Legislature, the department and the general public. Such
62 report shall describe the activities undertaken by the state
63 center and the regional centers pursuant to these provisions
64 in the preceding year.

**§5B-2-6a. Regional small business innovation centers;
locations; authority.**

1 (a) Upon the recommendation of the state director and a
2 demonstration for the need thereof, the state board of
3 directors may certify and provide funding for such number
4 of regional small business innovation centers as it may
5 consider necessary or desirable and within available
6 appropriations. Such regional small business innovation
7 centers shall be affiliated with institutions of higher
8 education, either public or private, and may be located at
9 such places where need exists for such centers.

10 (b) It is recognized that there exists at the present time
11 programs for the development of and assistance to small
12 businesses in the statewide network of the West Virginia
13 Small Business Development Center with regional centers
14 operating at the University of Charleston, West Virginia
15 University, West Virginia Northern Community College,
16 Parkersburg Community College, Southern Community
17 College of West Virginia, Concord College, Salem College,
18 Alderson-Broadbush College, College of Graduate Studies,
19 and West Virginia Institute of Technology. These existing

20 programs are hereby established as regional small business
21 innovation centers.

22 (c) Each regional business innovation center shall be
23 authorized and permitted to employ such strategies,
24 techniques and innovations as it shall deem desirable in
25 accomplishing the purposes of this article.

26 (d) The president of each institution of higher education
27 establishing a regional small business innovation center
28 shall appoint a director for such center who shall serve at
29 the will and pleasure of such president.

**§5B-2-6b. State small business innovation center board
created; membership; regional center directors.**

1 There is hereby created the state small business
2 innovation network board which shall be composed of one
3 member representing each of the regional centers to be
4 named by the president of the respective colleges or
5 universities, and the state director of the small business
6 innovation center network who shall serve as chairman of
7 the board.

§5B-2-6c. Functions and duties of regional centers.

1 It shall be the function of regional small business
2 innovation centers to:

3 (a) Establish programs to identify entrepreneurs with
4 marketable ideas and to support the organization and
5 development of new business and innovative businesses,
6 including technologically oriented enterprises;

7 (b) Conduct conferences and seminars to provide new
8 and innovative businesses with access to individuals and
9 organizations with specialized expertise;

10 (c) Develop and maintain a source file and an
11 information program to establish a statewide network of
12 public, private and educational resources to assist the
13 organization and development of new and innovative
14 businesses, and to furnish centralized services with regard
15 to public services and governmental programs;

16 (d) Provide new and innovative businesses with access
17 to managerial and technical expertise and to provide
18 assistance in resolving problems encountered by such
19 businesses;

20 (e) Conduct planning and research, including feasibility

21 studies and market research in cooperation with the
22 department;

23 (f) Assist in the identification and development of new
24 and innovative business opportunities;

25 (g) Foster the establishment and strengthening of
26 business service agencies, including trade associations and
27 cooperatives, which provide services to new and innovative
28 businesses;

29 (h) Implement the furnishing of business counseling,
30 management training and other related services, with
31 special emphasis on the development of management
32 training programs using the resources of the business
33 community, the state labor-management council and state
34 and private colleges and universities, and with emphasis
35 upon providing management training of sufficient scope
36 and duration to develop entrepreneurial and managerial
37 self-sufficiency on the part of the new and innovative
38 businesses served;

39 (i) Provide access to business analysts who can refer
40 new and innovative businesses to available experts;

41 (j) Conduct studies, research and counseling concerning
42 the managing, financing and operation of new and
43 innovative businesses;

44 (k) Foster and support scientific and technological
45 research for the development and application of new
46 technologies identified as having significant potential for
47 economic growth in the state or designed to further new and
48 more extensive uses of the natural and other resources of
49 the state, and to assist in technology transfer, research and
50 coupling from existing sources to new and innovative
51 businesses;

52 (l) Organize, conduct, sponsor or cooperate in and assist
53 the conducting of institutes, conferences, demonstrations
54 and studies relating to the stimulation and formulation of
55 new and innovative businesses;

56 (m) Assist new and innovative businesses in solving
57 problems concerning operations, manufacturing,
58 engineering, technology exchange and development,
59 personnel administration, marketing, sales,
60 merchandising, finance, accounting, business strategy
61 development and other disciplines required for business
62 growth and expansion, increased productivity and
63 management improvement;

- 64 (n) Provide access to professional specialists to conduct
65 research or to provide counseling assistance to new and
66 innovative businesses whenever the need arises;
- 67 (o) Determine the availability of financial resources and
68 recommend methods for delivery of financial assistance to
69 new and innovative businesses, including methods of
70 securing equity capital;
- 71 (p) Cooperate with other regional business innovation
72 centers for the purpose of coordinating efforts;
- 73 (q) Provide, whenever practicable, feasible and
74 desirable, housing for new and innovative businesses in
75 order to better accomplish the purposes set forth herein;
- 76 (r) Assist businesses participating in the program to
77 develop comprehensive business plans with specific
78 business targets, objectives and goals;
- 79 (s) Provide for such other nonfinancial services as
80 deemed necessary for the establishment, preservation and
81 growth of participating businesses, including, but not
82 limited to, loan packaging, financial counseling,
83 accounting and bookkeeping assistance, marketing
84 assistance and management assistance;
- 85 (t) Assist participating businesses in obtaining equity
86 and debt financing;
- 87 (u) Establish regular performance monitoring and
88 reporting systems for participating businesses to assure
89 compliance with their business plans;
- 90 (v) Analyze and report the causes of success and failure
91 of new and innovative businesses participating in the
92 program;
- 93 (w) Provide counseling and assist with technology
94 development when necessary to help new and innovative
95 businesses find solutions for complying with
96 environmental, energy, health, safety and other federal,
97 state and local laws and regulations;
- 98 (x) Apply for and receive gifts or grants in money or in
99 kind from any person, organization, governmental agency
100 or entity whatsoever which shall be exclusively utilized by
101 the regional business innovation center receiving such gifts
102 or grants; and
- 103 (y) Prepare an annual report by the first day of
104 September of each year detailing the operation of the center
105 for the previous year and submit the same to the director of
106 the state business innovation center, and, as to regional

107 business innovation centers existing and incorporated by
108 virtue of these provisions, prepare and submit by the first
109 day of September, one thousand nine hundred eighty-five, a
110 report to the same authorities detailing a preliminary plan
111 for the implementation of the program, including
112 coordination and expansion of the various original
113 programs.

**§5B-2-6d. Documentary materials concerning trade secrets;
commercial or financial information;
confidentiality.**

1 Any documentary material or data made or received by
2 any public body for the purpose of furnishing assistance to a
3 new and innovative business, to the extent that such
4 material or data consists of trade secrets or commercial or
5 financial information regarding the operation of such
6 businesses, shall not be considered public records, and shall
7 be exempt from disclosure pursuant to the provisions of
8 chapter twenty-nine-b of this code. Any discussion or
9 consideration of such trade secrets or commercial or
10 financial information may be held by the public body in
11 executive session closed to the public, notwithstanding the
12 provisions of article nine-a, chapter six of this code.

§5B-2-6e. Rules and regulations.

1 The director of the state small business innovation center
2 shall make and adopt rules and regulations for the
3 establishment, operation and maintenance of any regional
4 business innovation center established including such
5 rules, regulations and standards as may be necessary for
6 compliance with any federal statute pertaining to grants-
7 in-aid, and such other rules and regulations as may be
8 necessary to effectuate the purposes set forth herein,
9 including regulations establishing any fee to be charged for
10 services provided pursuant hereto.

**§5B-2-7. Authority of director to provide low-interest loans to
private companies entering into the process of
converting West Virginia coal to coke; funding.**

1 Effective the first day of July, one thousand nine hundred
2 eighty-seven, the director, with the approval of the
3 governor, is hereby empowered to provide reduced rate

4 loans to private companies for the building of coal
5 processing facilities for the making of coke for steel
6 production. Funds for such loans shall be provided from
7 moneys borrowed from the workers' compensation fund or
8 any fund administered by the state. The loans will be repaid
9 through the governor's office of community and industrial
10 development to the fund from which they were borrowed.
11 The rate of interest charged shall be two percent below the
12 current prime lending rate for funds available from private
13 sources in projects of a similar nature. The state shall fund
14 no more than eighty percent of the total cost of the project.
15 The private company sponsoring the project must provide
16 the other twenty percent of the project's funds from its own
17 capital or from moneys borrowed from nonpublic sources.
18 The moneys borrowed are to be used for the construction of
19 coal coking facilities and related buildings and other
20 structures: *Provided*, That all coal processed at this facility
21 during the time when loan moneys are being utilized and for
22 five years following the repayment of the loan must be coal
23 mined exclusively in West Virginia. A private company
24 applying to the governor's office of community and
25 industrial development for a loan pursuant to this section
26 shall certify on its loan application that the reduced rate
27 loan will be used exclusively for constructing coal coking
28 facilities for the process of converting West Virginia coal to
29 coke.
30 The director is authorized to promulgate rules and
31 regulations consistent with the provisions of this section to
32 aid in administration of the provisions of this section.

ARTICLE 2A. HIGHER EDUCATION-INDUSTRY PARTNERSHIPS.

- §5B-2A-1. Legislative purpose.
- §5B-2A-2. University-industry research and development centers.
- §5B-2A-3. Higher education-industry collaboration and technical assistance.
- §5B-2A-4. Vandalia partnership program for research and technical assistance.
- §5B-2A-5. Vandalia partnership fund.
- §5B-2A-6. Application for grants; eligibility and criteria.
- §5B-2A-7. Board of trustees; grants; authority.
- §5B-2A-8. Appointment of the director.
- §5B-2A-9. Annual reports.

§5B-2A-1. Legislative purpose.

1 A pressing need exists for collaborative research and

2 development between institutions of higher education and
3 industry. This need also extends to assisting companies to
4 develop and adapt to new technology. A commitment by the
5 state to support cooperative university-industry
6 partnerships will preserve existing jobs and create new
7 jobs; promote development of business enterprises and help
8 them become competitive; and enable West Virginia to
9 achieve the goals of economic growth and full employment
10 by revitalizing and diversifying the West Virginia economy.
11 Focused research and technical assistance efforts related to
12 West Virginia industry will speed such development,
13 improve technology transfer, assist companies in becoming
14 growth leaders and link basic research and technological
15 developments to economic advancement.

§5B-2A-2. University-industry research and development centers.

1 University-industry research and development centers
2 shall be established near or on selected college and
3 university campuses as approved by the board of trustees
4 and the board of regents. Joint research and development
5 efforts at each center shall be dedicated to one or several
6 targeted industries or processes. Centers may concentrate
7 on such topics as coal products and uses; materials and
8 coatings production processes; flexible manufacturing,
9 robotics and microprocessor controlled production;
10 biotechnology applications; glass and silicon products;
11 materials handling and distribution; wood and coal as
12 feedstocks for the chemical industry; the relationship
13 between labor and management and the changes faced by
14 each of them; the promotion of West Virginia products and
15 international trade; and cellulose, timber and paper
16 products. In addition to any other state moneys received,
17 each proposed center may apply for grants pursuant to the
18 provisions of section six of this article.

§5B-2A-3. Higher education-industry collaboration and technical assistance.

1 Institutions of higher education and corporations may
2 engage in collaborative projects designed to assist
3 companies to adapt or develop new technology. Through
4 such collaborative efforts, each project may be eligible to

5 receive financial support through the matching grant
6 programs defined in this article.

7 Each center is authorized and empowered to solicit and
8 accept financial support from sources other than the state.
9 Each center shall deposit all funds received into a special
10 revenue account in the state treasury. A special revenue
11 account shall be established for each center.

§5B-2A-4. Vandalia partnership program for research and technical assistance.

1 The director shall have the authority to allocate any funds
2 available to higher education-industry projects operating
3 under the provisions of this article. The amount of the grant
4 may not exceed the level of contribution from combined
5 academic and corporate sources.

6 It shall be the duty of the director to develop a program, to
7 be known as the Vandalia partnership program, to bring
8 together, through challenge or matching grants, partners
9 from the business, industry, public and educational sectors
10 to develop and apply technologies which will strengthen
11 existing business and stimulate the formation of new firms
12 and products including:

13 (1) *Joint research and development projects.* — Such
14 projects shall require a joint effort of a West Virginia
15 business and a higher educational institution of this state
16 with the potential for preserving or creating jobs in this
17 state;

18 (2) *Education and training projects.* — Such projects
19 shall include employment training or retraining, labor
20 market and occupational analysis, new courses, sharing of
21 costly equipment, educational or technical assistance with
22 the small business innovation centers; and

23 (3) *Entrepreneurial development projects.* — Such
24 projects shall include technical assistance, development of
25 business plans management counseling, technology
26 transfer, venture capital assistance with emphasis on
27 establishing new projects, processes or services.

§5B-2A-5. Vandalia partnership fund.

1 There is hereby established a Vandalia partnership fund
2 to which shall be credited any state appropriations, gifts,
3 grants or other moneys available to the fund.

4 The center shall invest and reinvest the fund, and the
5 income thereof, pending use for the purposes of this article.
6 The fund shall operate as a revolving fund whereby all
7 appropriations and payments thereto may be applied and
8 reapplied by the center for the purposes of this article.

§5B-2A-6. Application for grants; eligibility and criteria.

1 Applicants for grants shall submit a proposal which shall
2 set forth the nature of the project, the commitment from the
3 partners either in money, equipment or in kind services and
4 the request for funding. Private, public and educational
5 financial support shall be required as part of each
6 application. Proposals for funding will be reviewed on a
7 competitive basis by a panel of experts appointed by the
8 board of trustees.

9 Among the criteria used to evaluate each proposal will be:

10 (a) Probability of advancing the success of a company
11 doing business in the state;

12 (b) Likelihood of creating jobs, conserving jobs, or
13 leading to a new or expanded industry or venture in the
14 state;

15 (c) Promise of transferring the research and
16 development findings to marketable products;

17 (d) Level of financial contribution from corporate or
18 other sources;

19 (e) Technical or scientific feasibility of the effort, and
20 competency of the team to produce useful results; and

21 (f) Probability of strengthening the permanent research
22 and development base of both the institutions of higher
23 education in West Virginia and industry or sustaining
24 partnerships.

§5B-2A-7. Board of trustees; grants; authority.

1 There is hereby created a board of trustees consisting of
2 the director, the governor or his designee, the chancellor of
3 the board of regents or his designee, and two persons
4 representative of business and industry to be appointed by
5 the governor, with the advice and consent of the Senate.

6 The board shall have the authority to review and approve
7 all applications for grants or funds hereunder according to
8 the purposes of this article, and the rules and regulations
9 promulgated hereunder.

§5B-2A-8. Appointment of the director.

1 The director shall be appointed by the governor from a
2 list of three persons submitted by the board of regents. The
3 board of regents shall within thirty days of the effective
4 date of this article appoint a search committee of
5 representatives of the educational, government, business
6 and labor sectors to solicit and interview candidates for the
7 position of director. The director shall be qualified by
8 knowledge and experience in the field of research and
9 technology programs.

§5B-2A-9. Annual reports.

1 On the first day of January of each year, the director shall
2 submit a report on the operation of the center to the
3 governor and to the Legislature. Such report shall include a
4 summary of the activities of the center and a complete
5 statement of grants made hereunder.

ARTICLE 2B. ENTERPRISE ZONE AUTHORITY.

§5B-2B-1. Legislative purpose.

§5B-2B-2. Definitions.

§5B-2B-3. Enterprise zone authority created; appointment and terms of
members; powers.

§5B-2B-4. Duties of the authority.

§5B-2B-5. Enterprise zone tax exemptions.

§5B-2B-6. Administrative regulation exemptions.

§5B-2B-7. Economically depressed areas; designation.

§5B-2B-8. Enterprise zone requirements for creation.

§5B-2B-9. Designation of enterprise zones; conditions for preference of
enterprise zones.

§5B-2B-1. Legislative purpose.

1 The Legislature hereby finds and declares that the health,
2 safety and welfare of the people of West Virginia are
3 enhanced by the continual encouragement, development,
4 growth and expansion of private enterprise within this
5 state, and that there are certain economically depressed
6 areas in the state that need particular attention to create
7 new jobs, stimulate economic activity and attract private
8 sector investment rather than government subsidy to
9 improve the quality of life of their citizens. It is the purpose
10 of the Legislature to encourage new economic activity in
11 these depressed areas of the state by means of reduced taxes

12 and the removal of unnecessary governmental barriers to
13 the production and earning of wages and profits and the
14 creation of economic growth.

§5B-2B-2. Definitions.

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

3 (a) "Authority" means the enterprise zone authority of
4 West Virginia.

5 (b) "Enterprise zone" means an area of the state
6 designated by the authority to be eligible for the benefits of
7 this article.

8 (c) "Qualified business" means any person, corporation
9 or other entity who, during the time of designation of an
10 enterprise zone, is engaged in the active conduct of a trade
11 or business:

12 (1) With at least fifty percent of its employees
13 performing substantially all of their services within an
14 enterprise zone; and

15 (2) With individuals from one or more of the following
16 three categories constituting at least twenty-five percent of
17 the business's employees:

18 (i) Residents of an enterprise zone;

19 (ii) Individuals who have been unemployed for at least
20 twelve months immediately prior to obtaining employment
21 with the business; or

22 (iii) Individuals who have received public assistance
23 benefits for at least twelve months immediately prior to
24 obtaining employment with the business.

25 (d) "Qualified property" means:

26 (1) Any tangible personal property located in an
27 enterprise zone used predominantly by the taxpayer in the
28 zone in the active conduct of a trade or business; or

29 (2) Any real property located in such zone which:

30 (i) Was used predominantly by the taxpayer in the
31 active conduct of a trade or business; or

32 (ii) Was the principal residence of the taxpayer on the
33 date of the sale or exchange;

34 (3) Any interest in a corporation, partnership or other
35 entity if, for the most recent taxable year of such entity
36 ending before the date of the sale or exchange, such entity
37 was a qualified business.

38 (e) "Qualified employee" means any employee who
39 works for a qualified business.

**§5B-2B-3. Enterprise zone authority created; appointment and
terms of members; powers.**

1 There is hereby created the enterprise zone authority
2 which consists of seven members. The following
3 membership of the authority shall be appointed by the
4 governor with the advice and consent of the Senate: One
5 member shall be appointed from a list of three names
6 submitted by the West Virginia labor-management
7 advisory council; one member shall be appointed from a list
8 of three names submitted by the West Virginia municipal
9 league; one member shall be appointed from a list of three
10 names submitted by the West Virginia association of county
11 officials; three members, no more than two of which shall be
12 from the same political party, shall be appointed by the
13 governor to serve at large.

14 In addition to the gubernatorial appointees, the director
15 of the governor's office of community and industrial
16 development shall serve as a member. The commission shall
17 elect a chairman from its members at its first meeting, to be
18 called by the director of the governor's office of community
19 and industrial development, as soon as practicable.

20 The members appointed by the governor shall serve a
21 term of four years, except that the members first appointed
22 shall serve for the following terms: Three for a term of one
23 year; two for a term of two years; and one for a term of three
24 years. The governor shall have sole discretion in
25 determining the terms for his initial appointees.

26 The authority shall administer this article and has the
27 following powers and duties:

28 (1) To establish criteria for determining which areas
29 qualify as enterprise zones;

30 (2) To monitor the implementation of this article and
31 submit reports evaluating the effectiveness of the program
32 and any suggestions for legislation to the governor and
33 Legislature on the second Wednesday of January of each
34 year;

35 (3) To conduct a continuing evaluation program of
36 enterprise zones;

37 (4) To promulgate all necessary rules and regulations in

38 accordance with the provisions of chapter twenty-nine-a of
39 this code to carry out the purposes of this article;

40 (5) To assist units of local government in obtaining
41 federal status as an enterprise zone;

42 (6) To assist any qualified business in obtaining the
43 benefits of any incentive or inducement program provided
44 by law and to certify qualified businesses to be eligible for
45 the benefits of this article; and

46 (7) To assist the governing authority of an enterprise
47 zone in obtaining assistance from any other agency of state
48 government including, but not limited to, assistance in
49 providing training and technical assistance to qualified
50 businesses within a zone.

§5B-2B-4. Duties of the authority.

1 (a) The authority shall establish and design for public
2 display a master business license which shall certify that
3 the qualifying business has obtained all necessary state
4 agency permits, licenses, certificates, approvals,
5 registrations, charters or any other form of permission
6 required by law, including agency rule, to engage in
7 business in an enterprise zone.

8 (b) The authority shall provide information and
9 appropriate assistance to persons desiring to locate and
10 engage in business in an enterprise zone regarding the state
11 licenses, permits, certificates, approvals, registrations,
12 charters and any other forms of permission required by law
13 to engage in business in the state.

14 (c) Irrespective of any authority delegated to the
15 authority to implement the provisions of this article, the
16 authority for determining if any requested licenses,
17 permits, certificates, approvals, registrations, charters or
18 any other form of permission required by law shall be issued
19 shall remain with the agency otherwise legally authorized
20 to issue the permission required.

§5B-2B-5. Enterprise zone tax exemptions.

1 Notwithstanding any provision of this code to the
2 contrary, the following exemptions apply to enterprise
3 zones:

4 (1) All interest payments on loans made to qualified
5 businesses or on mortgage loans on any property within an

6 enterprise zone shall receive a fifty percent reduction of all
7 state taxes if such loans were made after the enterprise zone
8 was officially designated;

9 (2) Building materials used in remodeling,
10 rehabilitation or new construction in an enterprise zone
11 and new and used equipment and machinery purchased by
12 qualified businesses for use in the enterprise zone, certified
13 by the purchaser to be used for these purposes, shall be
14 exempt from sales and use tax;

15 (3) Motor vehicles purchased from a seller located
16 within the enterprise zone by qualified businesses in an
17 enterprise zone shall receive a fifty percent reduction of the
18 motor vehicle privilege tax;

19 (4) Qualified businesses shall receive a tax credit in the
20 amount of unemployment compensation taxes paid in
21 accordance with article five, chapter twenty-one-a of this
22 code, against any corporate net income or personal income
23 tax liability of such qualified business; and

24 (5) For state tax purposes, qualified businesses may
25 carry forward their net operating losses, including casualty
26 losses, for the period of existence of the enterprise zone in
27 which the qualified business is located.

§5B-2B-6. Administrative regulation exemptions.

1 (a) In order to carry out the purposes of this article, any
2 administrative body which promulgates administrative
3 regulations pursuant to chapter twenty-nine-a of this code
4 may, by regulation, exempt enterprise zones from the
5 provisions of any regulation, in whole or in part,
6 promulgated by that administrative body.

7 (b) Enterprise zones shall not be made exempt from the
8 provisions of any regulation if such exemption endangers
9 the health and safety of the citizens of the state as
10 determined by the administrative body responsible for
11 promulgation and enforcement of such regulation.

12 (c) The authority shall conduct a review of all state
13 regulations and shall recommend to the appropriate
14 administrative bodies the exemption of regulations
15 promulgated by such body which would contribute to the
16 implementation of this article.

17 (d) Any exemption of a regulation in enterprise zones
18 shall be adopted by regulation in the manner provided by
19 chapter twenty-nine-a of this code.

§5B-2B-7. Economically depressed areas; designation.

1 (a) Any municipal or county government by act of the
2 governing body may designate any area or areas within
3 their jurisdiction to be an economically depressed area.
4 Such municipal or county government may then make
5 written application to the authority to have such area or
6 areas declared to be an enterprise zone. If the area
7 designated by a county government includes a municipality
8 or part thereof, the county government shall receive the
9 approval of the municipal government for the inclusion of
10 said municipality or part thereof. Such application shall
11 include a description of the location of the area or areas in
12 question and such other information as the authority may
13 require.

14 (b) Upon receipt of an application from a municipal or
15 county government, the authority shall review the
16 application to determine whether the area or areas
17 described in the application qualify to be designated an
18 enterprise zone.

19 (c) The authority shall complete its review within one
20 hundred twenty days of receipt of the application but may
21 extend this time period an additional sixty days for good
22 cause. If the authority denies the application, it shall inform
23 the unit of local government of the fact along with the
24 reasons for the denial.

§5B-2B-8. Enterprise zone requirements for creation.

1 (a) Any area or areas of a city, county, or of the state,
2 may be designated an enterprise zone which:

3 (1) Has a continuous boundary; and

4 (2) Is an area of pervasive poverty, unemployment and
5 economic distress.

6 (b) An area meets the requirements of subdivision (2),
7 subsection (a) of this section, if:

8 (1) The average rate of unemployment in such area for
9 the most recent eighteen-month period for which data are
10 available was at least one and one-half times the average
11 national rate of unemployment for such eighteen-month
12 period;

13 (2) At least seventy percent of the residents living in the
14 proposed enterprise zone have incomes below eighty
15 percent of the median income of the residents of the county

16 or counties requesting designation as certified in a
17 statistical report prepared by the state tax department; or

18 (3) The population of all census tracts in the area
19 decreased by ten percent or more between the two most
20 recent decennial United States census and the city or
21 county requesting designation establishes to the
22 satisfaction of the authority that either:

23 (i) Chronic abandonment or demolition of commercial
24 or residential structures exist in the area; or

25 (ii) Substantial tax delinquencies relating to ad
26 valorem real property taxes of commercial or residential
27 structures exist in the area.

**§5B-2B-9. Designation of enterprise zones; conditions for
preference of enterprise zones.**

1 (a) In each of the three calendar years after the calendar
2 year one thousand nine hundred eighty-six, the authority
3 may designate two enterprise zones. In the fourth calendar
4 year after the year one thousand nine hundred eighty-six,
5 the authority may designate one enterprise zone. In
6 deciding which areas should be designated as enterprise
7 zones the authority shall give preference to:

8 (1) Areas with the highest levels of poverty,
9 unemployment and general distress;

10 (2) Areas which have the widest support from the
11 government seeking designation, the community, residents,
12 local business and private organizations; and

13 (3) Areas for which the government seeking designation
14 has made or will make the greatest effort to encourage
15 economic activity and remove impediments to job creation,
16 including, but not limited to, a reduction of tax rates or fees
17 and increase in the level or efficiency of local services and a
18 simplification or streamlining of governmental
19 requirements on employers or employees, taking into
20 account the resources available to such government to make
21 such efforts.

22 (b) Any designation of an area as an enterprise zone
23 shall remain in effect during the period beginning on the
24 date of designation and ending on the thirty-first day of
25 December of the twentieth year following the year of
26 designation.

27 (c) The authority may remove designation of any area as

28 an enterprise zone if such area no longer meets the criteria
29 for designation as set out in this article, and by regulation
30 adopted by the authority pursuant to this article. No
31 designation shall be removed less than ten years from the
32 date of original designation.

ARTICLE 2C. OFFICE OF FEDERAL PROCUREMENT ASSISTANCE.

§5B-2C-1. Legislative findings; office of federal procurement assistance created; appointment of director; compensation; rules and regulations.

§5B-2C-2. Duties and powers.

§5B-2C-3. Financial and technical assistance.

§5B-2C-1. Legislative findings; office of federal procurement assistance created; appointment of director; compensation; rules and regulations.

1 (a) The Legislature finds that West Virginia ranks
2 significantly behind almost all other states in the
3 manufacture and production of products or its services sold
4 to the federal government; that there is a need to identify
5 those businesses in West Virginia which manufacture or
6 produce products or services which are marketable for sale
7 to the federal government; and that there is a need to
8 develop an aggressive marketing strategy to provide
9 opportunities for West Virginia businesses to compete with
10 other states in sales to the federal government; that there is
11 a need to assist small and emerging science and
12 technologically oriented businesses in applying for federal
13 contracts.

14 (b) The Legislature finds that it is the purpose of the
15 office of federal procurement assistance to encourage and
16 assist the state businesses through loans, investments,
17 research, technical and managerial advice and other similar
18 means in the sales of products and services to the federal
19 government including the general services administration,
20 the national aeronautics and space administration, and the
21 department of defense.

22 (c) There is hereby created, within the governor's office
23 of community and industrial development, the office of
24 federal procurement assistance. A director of the office
25 shall be appointed by the governor with the advice and
26 consent of the Senate. The director shall have
27 administrative control and supervision of the office.

28 The director shall promulgate rules and regulations to
29 carry out the purposes and programs of the office, to include
30 generally the programs available, and the procedure and
31 eligibility of application relating to assistance under such
32 programs.

§5B-2C-2. Duties and powers.

1 It shall be the duty of the office of federal procurement
2 assistance:

3 (1) To prepare an inventory of state businesses which
4 have the potential of selling goods or products to the federal
5 government;

6 (2) To prepare and periodically issue a register of
7 federal contracts in accordance with applicable federal
8 laws or regulations for which businesses of the state of West
9 Virginia may qualify for bidding;

10 (3) To sponsor and conduct conferences, collect and
11 disseminate information and issue periodic reports relating
12 to the availability of federal contracts upon which state
13 businesses can bid;

14 (4) To identify emerging needs of the federal
15 government and emerging technologies which will meet
16 those needs, and develop an action plan of equipping and
17 preparing businesses in this state to meet those needs with
18 products and services, which plan shall be reduced to
19 writing, and annually reviewed and updated, and shall be
20 included in the annual report to the Legislature required
21 under this article;

22 (5) To directly assist, both technically and financially,
23 businesses within this state in qualifying for and bidding on
24 federal contracts including dissemination; and

25 (6) To develop a formal liaison or other entity with the
26 congressional delegation of this state and with the governor
27 to develop a specific plan of action utilizing the good offices
28 and assistance of the congressional delegation in carrying
29 out the purposes of this section.

§5B-2C-3. Financial and technical assistance.

1 It shall be the duty of the office of federal procurement
2 assistance and the corresponding duty of the West Virginia
3 industrial and trade jobs development corporation to
4 develop, maintain and implement a program of technical

5 and financial assistance available under article two,
 6 chapter five-c of this code, and specifically targeted to
 7 businesses identified under this article as having the
 8 potential of selling goods or products to the federal
 9 government, including the issuance of revenue bonds by the
 10 economic development authority, or the issuance of other
 11 securities.

ARTICLE 3. WEST VIRGINIA EXPORT DEVELOPMENT AUTHORITY.

§5B-3-3. West Virginia export development authority—Creation and purposes.

§5B-3-5a. Duties.

**§5B-3-3. West Virginia export development authority —
 Creation and purposes.**

1 There is hereby created “The West Virginia Export
 2 Development Authority,” a body politic and corporate,
 3 hereinafter referred to as the “Authority.”

4 The purpose of this authority shall be to:

5 (a) Assist, promote, encourage, develop and advance
 6 economic prosperity and employment throughout this state
 7 by fostering the expansion of exports of manufactured
 8 goods and services to foreign purchasers;

9 (b) Cooperate and act in conjunction with other
 10 organizations, public and private, the objects of which are
 11 the promotion and advancement of export trade activities
 12 in the state of West Virginia;

13 (c) Establish a source of funding credit guarantees and
 14 insurance to support export development not otherwise
 15 available to West Virginia small and medium sized
 16 businesses; and

17 (d) Provide financial counseling and assistance to
 18 potential and existing exporters.

§5B-3-5a. Duties.

1 The authority shall have the following duties:

2 (a) To create and develop a computer based state trade
 3 leads program as follows:

4 (1) To prepare an inventory of state products that are
 5 currently and potentially exportable, together with the
 6 firms offering such products, by standard industrial
 7 classification (SIC) and by applicable international
 8 classification;

9 (2) To develop a program that will match state products
10 as classified with trade leads from foreign countries or their
11 agents, representatives or distributors, by utilizing the
12 United States Department of State, the Agency for
13 International Development (AID), the World Bank, or all
14 other available resources; and

15 (3) To develop a program of personal contact with firms
16 requesting such current and available trade leads as
17 providing follow-up assistance to interested firms in the
18 state;

19 (b) To assist, promote, encourage, develop and advance
20 economic prosperity and employment throughout this state
21 by fostering the expansion of exports of manufactured
22 goods and services to foreign purchasers;

23 (c) To cooperate and act in conjunction with other
24 organizations, public and private, the objects of which are
25 the promotion and advancement of export trade activities
26 in the state;

27 (d) To establish a source of funding credit guarantees
28 and insurance for political and commercial loss, as defined
29 in this article, to support export development not otherwise
30 available to West Virginia small and medium sized
31 businesses;

32 (e) To provide financial counseling and assistance to
33 potential and existing exports;

34 (f) To research and identify those foreign countries with
35 the greatest potential for importing state products, and for
36 foreign investment in West Virginia, for the purposes of
37 promoting and facilitating trade with such countries, the
38 investment of capital by such countries in this state, and for
39 other economic activities including tourism;

40 (g) To seek foreign trade zone status for, and to assist in
41 the applications for foreign trade zone status of political
42 subdivisions and private corporations.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

§5B-4-5. Compensation of members of council and committees; independent agency; employment and transferring staff; expenses of council.

1 The labor-management council and the regional advisory
2 committees shall constitute an independent agency housed
3 within the governor's office of community and industrial

4 development. The council shall appoint a director and other
5 staff for the council. Funds for necessary staff, supplies and
6 other expenses shall be paid from and with an
7 appropriation by the Legislature as well as reimbursements
8 for each member of the council and of the regional advisory
9 committees for reasonable and necessary expenses.

ARTICLE 5. EMPLOYEE OWNERSHIP ASSISTANCE PROGRAM.

§5B-5-1. Definitions.

§5B-5-2. Employee-ownership program.

§5B-5-3. Technical assistance.

§5B-5-4. Financial assistance.

§5B-5-5. Criteria for evaluating applications.

§5B-5-6. Administration of the program.

§5B-5-7. Nondiscrimination.

§5B-5-1. Definitions.

1 The following words and phrases as used in this article,
2 shall have the meanings set forth below, unless the context
3 clearly indicates otherwise:

4 (a) *Director*. — The director of the governor's office of
5 community and industrial development.

6 (b) *Office*. — The governor's office of community and
7 industrial development.

8 (c) *Employee-owned enterprise*. — A business which
9 either:

10 (1) Meets all of the following conditions:

11 (i) Is organized as:

12 (A) A worker cooperative, within the meaning of the
13 Internal Revenue Code of 1954, as amended; or

14 (B) A corporation in which employees own the stock of
15 the corporation through an employee stock ownership plan,
16 within the meaning of section 4975(e)(7) of the Internal
17 Revenue Code of 1954, as amended;

18 (2) Is organized in a manner determined by the director
19 to involve substantial employee participation.

20 (d) *Employee-owned group*. — A corporation or other
21 entity, including labor unions, formed by or on behalf of the
22 current or former employees of an industrial or commercial
23 firm or facility located in this state for the purpose of
24 assuming ownership or control of a firm or facility and
25 operating it as an employee-owned enterprise.

§5B-5-2. Employee-ownership program.

1 The office will establish a technical and financial
2 assistance program to promote the development of
3 employee-owned enterprises.

§5B-5-3. Technical assistance.

1 (a) *Authorization to advance funds.* — The office is
2 authorized to advance funds for the purpose of providing
3 loans to employee-ownership groups in industrial and
4 commercial enterprises for technical assistance to develop
5 or improve an employee-owned enterprise.

6 (b) *Eligibility.* — Employee-ownership groups shall be
7 eligible for assistance if the employees in the employee-
8 ownership group are employed by, formerly employed or
9 affiliated with one of the following:

10 (1) Existing firms facing a threat of substantial layoffs
11 or a plant closing and investigating a reorganization of all
12 or some portion of the firm's business activity, at sites
13 located within the state, as an employee-owned enterprise.
14 For purposes of this section, "existing firms" shall include
15 an ongoing concern, the assets of an existing company or the
16 assets of a company which has been closed for no more than
17 one year as of the date of the application for the feasibility
18 study loan.

19 (2) Existing firms, not necessarily facing a threat of
20 substantial layoffs or a plant closing, but considering a
21 conversion to an employee-owned enterprise and seeking
22 professional services to accomplish this, if conversion to
23 employee ownership will create new jobs or retain existing
24 jobs at sites within the state.

25 (3) Existing firms which currently have some form of
26 employee ownership and require professional services to
27 ensure success of the employee-owned enterprise in its
28 effort to create new jobs or retain existing jobs at sites
29 within the state.

30 (c) *Uses.* — Loans will be made to employee-ownership
31 groups for the following purposes:

32 (1) Feasibility studies to investigate a reorganization or
33 new incorporation as an employee-owned enterprise. At a
34 minimum, the feasibility study should:

35 (i) Assess the market value and demand for the product
36 affected by the closing or layoff.

37 (ii) Assess the market value and demand for other
38 products which could be manufactured or assembled at the
39 plant affected by the closing or layoff.

40 (iii) Evaluate the production costs incurred if the plant
41 were to be operated by the employee-ownership group.

42 (iv) Determine whether there exists in the affected area
43 and in the employee-ownership group, the desire and
44 capacity to create a new production entity and to become
45 competitive.

46 (2) Professional services to implement a feasibility
47 study and other professional services to develop or ensure
48 the success of an employee-owned enterprise.

49 (d) *Repayment.* — Loans provided for feasibility studies
50 and other professional services to employee-ownership
51 groups to investigate a conversion to an employee-owned
52 enterprise are subject to the following repayment
53 conditions:

54 (1) If the enterprise studied is purchased or improved by
55 the employee group, the employee group shall arrange to
56 repay the entire amount of the loan, with interest, either at
57 the closing of the purchase of the company or within a
58 reasonable time period and under such terms and
59 conditions as the director may provide.

60 (2) If the enterprise studied is not purchased by the
61 employee group within one year after the completion of the
62 feasibility study, the applicant shall submit a final report
63 concerning the feasibility of repaying the loan.

64 (e) Other conditions:

65 (1) The applicant shall provide evidence that there is a
66 prospect for recovery and future job growth or job retention
67 in applications under subdivision (1), subsection (b) or a
68 substantial prospect of job growth or job retention in
69 applications under subdivisions (2) and (3), subsection (b)
70 of this section.

§5B-5-4. Financial assistance.

1 (a) *Authorization to advance funds.* — The office is
2 authorized to advance funds for the purpose of providing
3 loans and loan guarantees to employee-owned enterprises
4 reorganizing industrial, manufacturing, agricultural and
5 service enterprises for the development of employee-owned
6 enterprises.

7 (b) *Eligibility.* — Eligibility for this assistance shall be

8 limited to employee-ownership groups reorganizing an
9 existing enterprise which is facing a threat of substantial
10 layoffs or a plant closing, where adequate private financing
11 is not available. For purposes of this subsection, "existing
12 enterprise" shall include an ongoing concern, the assets of
13 an existing company or the assets of a company which has
14 been closed for no more than one year as of the date of
15 completion of a feasibility study.

16 (c) *Uses.* — Eligible project costs shall include land and
17 buildings, machinery and equipment, and working capital
18 secured by accounts receivable and inventory.

19 (d) *Debt instruments.* — The financial subsidy provided
20 should be the minimum necessary to accommodate the
21 borrower's financial needs. Debt instruments shall include
22 either or both of the following:

23 (1) Loans, including deferred interest and principal
24 payments; and

25 (2) Loan guarantees.

26 (e) *Security.* — Funds loaned shall be secured by lien
27 positions on collateral at the highest level of priority which
28 can accommodate the borrower's ability to raise sufficient
29 debt and equity capital. When the obligation of a firm is
30 guaranteed, the financial institution holding the obligation
31 shall be required to adequately secure the obligation.

32 (f) *Equity requirement.* — A significant equity
33 investment by the employee-ownership group equal to at
34 least ten percent of the project costs and including
35 substantial participation by at least two thirds of the
36 members of the employee-ownership group is required to
37 qualify for the loan or guarantee.

38 (g) *Feasibility study.* — Assistance shall not be
39 approved without a feasibility study demonstrating a
40 substantial prospect for job retention or future job growth
41 and a business plan including steps to facilitate labor-
42 management cooperation. General adherence to the plan is
43 required to receive funding.

§5B-5-5. Criteria for evaluating applications.

1 The office shall evaluate the applications based on the
2 following criteria:

3 (1) Number of jobs retained or created in relation to the
4 size of the loan. The loans shall not exceed a cost of fifteen
5 thousand dollars per job created or retained;

- 6 (2) Ability of the applicant to repay the loan and the
7 likelihood of retaining or creating jobs;
- 8 (3) Evidence of other private financial commitments;
- 9 (4) Evidence that, without the financial assistance,
10 other federal, state or local public and private investment
11 would be insufficient to finance the employee-owned
12 enterprise;
- 13 (5) The extent to which a firm employs a significant
14 number of employees or represents a significant portion of
15 employment in the community; and
- 16 (6) Any additional criteria specified by the office in
17 regulations promulgated hereunder.

§5B-5-6. Administration of the program.

- 1 (a) *Responsibility.* — The office will be responsible for
2 promoting the program, soliciting applications, evaluating
3 applications and making preliminary decisions on both
4 technical assistance and financial assistance.
- 5 (b) *Approval by director.* — The director will have full
6 responsibility for final approval of all applications for
7 assistance.
- 8 (c) *Advances.* — The office may make advances for the
9 purpose of making loans or loan guarantees consistent with
10 this act.
- 11 (d) *Loan and loan guarantee fees.* — The office may
12 establish and charge reasonable fees for processing loans or
13 loan guarantees under section four by order of the director.
- 14 (e) *Rules and regulations.* — The director may
15 promulgate any rules and regulations, statements of policy,
16 forms, guidelines and other procedures, forms and
17 requirements necessary for the implementation of the
18 proposals set forth herein.

§5B-5-7. Nondiscrimination.

- 1 No loan, loan guarantee or other financial assistance
2 shall be made to a recipient under this act unless the
3 recipient certifies to the office, in a form satisfactory to the
4 office, that it shall not discriminate against any employee or
5 against any applicant for employment because of race,
6 religion, color, national origin, sex or age.

**CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND
TRADE.**

ARTICLE 1. WEST VIRGINIA INDUSTRY ASSISTANCE CORPORATION.

§5C-1-3. Definitions.

§5C-1-5. Creation of the West Virginia industry assistance corporation.

§5C-1-6. Directors; number; appointment and terms of office; compensation; interest in competing business forbidden.

§5C-1-9. Corporation powers.

§5C-1-11. Principal office of the corporation; account books; directors' oath of office.

§5C-1-13. Authority of the board of investments.

§5C-1-3. Definitions.

1 For the purpose of this article:

2 (1) The term "enterprise" means a business entity which
3 is or proposes to be engaged in this state in any commercial
4 activity for profit. The entity may be owned, operated,
5 controlled or under the management of a person,
6 partnership, corporation, community-based development
7 organization or council, local commerce group, employee
8 stock ownership plan, pension or council, pension or
9 profit-sharing plan or trust, a group of participat-
10 ing employees who desire to own an entity which does
11 not presently exist, or any similar entity or organiza-
12 tion;

13 (2) The term "board of investments" means the board of
14 investments established by article six, chapter twelve of
15 this code;

16 (3) The term "borrower" means an enterprise, any of its
17 subsidiaries or affiliates, or any other entity the board of
18 investments may designate from time to time which
19 borrows funds for the benefit or use of an enterprise;

20 (4) The term "corporation" means the West Virginia
21 industry assistance corporation, unless the context in
22 which such term is used clearly indicates that reference is
23 made to some other corporation;

24 (5) The term "financing plan" means a plan designed
25 to meet the financing needs of an enterprise as reflected
26 in the operating plan;

27 (6) The term "fiscal year" means the fiscal year of an
28 enterprise; and

29 (7) The term "operating plan" means a document
30 detailing production, distribution, and sales plans of an
31 enterprise, together with the expenditures necessary to
32 carry out those plans (including budget and cash flow

33 projections), on an annual basis, and an employment-
34 generating plan setting forth steps to be taken by the
35 enterprise to create jobs and reduce unemployment in this
36 state.

§5C-1-5. Creation of the West Virginia industry assistance corporation.

1 (a) For the purpose of aiding the establishment and
2 expansion of the industry and trade in this state,
3 encouraging and increasing the use of energy derived from
4 hydrocarbon sources located in the state of West Virginia,
5 for developing and maintaining properties now owned or to
6 be owned by the state of West Virginia throughout this
7 state, and in the interest of improving employment
8 opportunities in this state, the body corporate, heretofore
9 denominated the "West Virginia Automobile Industry
10 Assistance Corporation," shall hereafter be designated the
11 "West Virginia Industry Assistance Corporation"
12 (hereinafter referred to as the "corporation"). The board of
13 directors first appointed shall be deemed the incorporators,
14 and the incorporation shall be held to have been effected
15 from the date of the first meeting of the board.

16 (b) The corporation is created and established to serve a
17 public corporate purpose and to act for the public benefit
18 and as a governmental instrumentality of the state of West
19 Virginia, to act on behalf of the state and its people in
20 improving their health, welfare and prosperity.

21 (c) The corporation:

- 22 (1) Shall have succession in its corporate name;
- 23 (2) May sue and be sued in its corporate name;
- 24 (3) May adopt and use a corporate seal, which shall be
25 judicially noticed;
- 26 (4) May make contracts as herein authorized; and
- 27 (5) May adopt, amend and repeal bylaws.

§5C-1-6. Directors; number; appointment and terms of office; compensation; interest in competing business forbidden.

1 (a) The board of directors of the corporation
2 (hereinafter referred to as the "Board") shall be composed
3 of three members, to be appointed by the governor, by and
4 with the advice and consent of the Senate. No more than

5 two of the directors shall be from the same political party.
6 In appointing the board, the governor shall designate the
7 chairman, vice chairman and treasurer. All other officials,
8 agents and employees shall be designated and selected by
9 the board.

10 (b) The terms of office of the members first taking office
11 on or after the first day of July, one thousand nine hundred
12 eighty- six, shall expire as designated by the governor at the
13 time of the nomination, one at the end of the second year,
14 one at the end of the fourth year and one at the end of the
15 sixth year, after the first day of July, one thousand nine
16 hundred eighty-six. A successor to be a member of the
17 board shall be appointed in the same manner as the original
18 members and shall have a term of office expiring six years
19 from the date of the expiration of the term for which his
20 predecessor was appointed.

21 (c) In cases of any vacancy in the office of director, such
22 vacancy shall be filled by appointment by the governor. Any
23 member appointed to fill a vacancy in the board occurring
24 prior to the expiration of the term for which his predecessor
25 was appointed shall be appointed for the remainder of such
26 term.

27 (d) The governor may remove a director in the case of
28 incompetence, neglect of duty, gross immorality or
29 malfeasance in office, and may declare such director's
30 office vacant and appoint a person for such vacancy as
31 provided in other cases of vacancy.

32 (e) Vacancies in the board, so long as there shall be two
33 members in office, shall not impair the powers of the board
34 to execute the functions of the corporation, and two of the
35 members in office shall constitute a quorum for the
36 transaction of the business of the board.

37 (f) Each of the members of the board shall be a citizen of
38 the state of West Virginia. The compensation of each
39 member of the board shall be paid by the corporation as
40 current expenses. Members of the board shall be
41 reimbursed by the corporation for actual expenses
42 (including traveling and subsistence expenses) incurred by
43 them in the performance of the duties vested in the board by
44 this article. No member of said board shall, during his
45 continuance in office, be engaged in any other business, but
46 each member shall devote himself to the work of the
47 corporation.

§5C-1-9. Corporation powers.

1 In order to foster and expand industry and trade in this
2 state, the corporation is empowered and directed:

3 (a) To provide, construct, operate, maintain and
4 improve such gas and oil pipelines, electric transmission
5 lines, substations, and facilities and structures appurtenant
6 thereto, as it finds necessary, desirable and appropriate for
7 the purpose of transmitting gas, oil and electric energy,
8 available for sale, from sources within this state to existing
9 and potential markets, and, for the purpose of interchange
10 of energy, to interconnect sources within this state with
11 either private projects, other state or federal projects, and
12 publicly owned power systems now or hereafter
13 constructed;

14 (b) To provide for the construction and maintenance of
15 streets, avenues, roads, alleys, ways, sidewalks, crosswalks
16 and other access ways to facilitate the ingress and egress to
17 industrial sites belonging to an enterprise;

18 (c) To construct, acquire, operate, maintain and
19 improve such waterworks systems and waterlines, sewer
20 systems and sewage treatment and disposal systems, or any
21 combination thereof, as it finds necessary, desirable and
22 appropriate for the purpose of assisting an enterprise in
23 carrying out its operating plan, and to acquire watersheds,
24 water and riparian rights, plant sites, rights-of-way and
25 any and all other property and appurtenances necessary,
26 appropriate, useful, convenient or incidental to such system
27 or systems; and ways to facilitate the ingress and egress
28 to industrial sites belonging to an enterprise;

29 (d) To acquire, by purchase, lease or donation, such real
30 or personal property, or any interest therein, including
31 buildings, lands, easements, facilities, equipment, rights-
32 of-way, franchises, oil or gas pipelines, electric
33 transmission lines, substations and facilities and structures
34 appurtenant thereto, waterworks systems and waterlines,
35 and sewer systems and sewage treatment and disposal
36 systems, as the board finds necessary and appropriate to
37 carry out the purposes of this article. Title to all property
38 and property rights acquired by the corporation shall be
39 taken in the name of the corporation;

40 (e) To acquire any property or property rights,
41 including patent rights, which in the opinion of the board

42 are necessary to carry out the purposes of this article by
43 purchase, lease, donation or by the exercise of the right of
44 eminent domain and to institute condemnation proceedings
45 therefor in the same manner as is provided by law for the
46 condemnation of real estate;

47 (f) To sell, lease or otherwise dispose of such personal
48 property as in the opinion of the board is not required for
49 the purposes of this article and such real property and
50 interests in land acquired in connection with buildings,
51 equipment, facilities or the construction or operation of gas
52 and oil pipelines, electric transmission lines, substations,
53 roads and facilities and other structures, waterworks
54 systems and waterlines, and sewer systems and sewage
55 treatment and disposal systems as in the opinion of the
56 board are not required for the purposes of this article;

57 (g) To negotiate and enter into such contracts,
58 agreements, and arrangements as it shall find necessary and
59 appropriate to carry out the purposes of this article;

60 (h) To accept appropriations, gifts, grants, bequests and
61 devises, and to dispose of the same to carry out its corporate
62 purposes;

63 (i) Finance, conduct or cooperate in financing or
64 conducting technological, business, financial or other
65 investigations which are related to or likely to lead to
66 business and economic development by making and
67 entering into contracts and other appropriate
68 arrangements, including the provision of leases, grants,
69 loans and other forms of assistance;

70 (j) To invest any funds not required for immediate
71 disbursement in any of the following securities:

72 (1) Direct obligations of or obligations guaranteed by
73 the United States of America;

74 (2) Bonds, debentures, notes or other evidences of
75 indebtedness issued by any of the following agencies: Banks
76 for cooperatives; federal intermediate credit banks; federal
77 home loan bank system; export-import bank of the United
78 States; federal land bank; the federal national mortgage
79 association or the government national mortgage
80 association;

81 (3) Bonds issued by public agencies or municipalities
82 and fully secured as to the payment of both principal and
83 interest by a pledge of annual contributions under an
84 annual contributions contract or contracts with the United

85 States of America; or temporary notes issued by public
86 agencies or municipalities or preliminary loan notes issued
87 by public agencies or municipalities in each case, fully
88 secured as to the payment of both principal and interest by a
89 requisition or payment agreement with the United States of
90 America;

91 (4) Certificates of deposit secured by obligations of the
92 United States of America;

93 (5) Direct obligations of or obligations guaranteed by
94 the state of West Virginia;

95 (6) Direct and general obligations of any other state
96 within the territorial United States; to the payment of the
97 principal of and interest on which the full faith and credit of
98 such state is pledged: *Provided*, That at the time of their
99 purchases, such obligations are rated in either of the two
100 highest rating categories by a nationally recognized bond-
101 rating agency; and

102 (7) Any fixed interest bond, note or debenture of any
103 corporation organized and operating within the United
104 States: *Provided*, That there exists an employment-
105 generating plan which is satisfactory to the board; has been
106 developed in consultation with other appropriate state
107 agencies, including, but not limited to, the department of
108 labor and the office of community and industrial
109 development; focuses upon the need to increase the number
110 of jobs available in this state; and can be carried out by the
111 borrower: *Provided, however*, That the loan is needed to
112 assist the borrower to open a new facility or expand an
113 existing facility in this state, and that by meeting such need
114 employment will be increased in the state; the borrower has
115 submitted to the board a satisfactory operating plan
116 demonstrating the ability of the borrower to generate
117 additional payment at a level which may be maintained or
118 increased without additional loans under the provisions of
119 this article; the board has received such assurances as it
120 shall require that the operating plan is realistic and
121 feasible; the borrower has submitted to the board a
122 satisfactory financing plan which meets the financial needs
123 of the borrower as reflected in the operating plan for the
124 period covered by such plan; the board has received
125 adequate assurances regarding the availability of all
126 financing, both public and private, contemplated by the

127 financing plan and that such financing is adequate to meet
128 the borrower's projected financial needs during the period
129 covered by the financing plan; none of the proceeds of a loan
130 made under the provisions of this article will be used to
131 repay credit extended or committed prior to the date the
132 loan is made under the provisions of this article; and the
133 financing plan submitted provides that expenditures under
134 the financing plan will reduce unemployment in this state;

135 (k) To procure insurance against any loss in connection
136 with its property in such amounts, and from such insurers,
137 as may be necessary or desirable;

138 (l) To make and publish such rules and regulations as
139 are necessary to effectuate its corporate purpose;

140 (m) To borrow money to carry out and effectuate its
141 corporate purpose and to issue notes as evidence of any such
142 borrowing in such principal amounts and upon such terms
143 as shall be necessary to provide sufficient funds for
144 achieving its corporate purpose, except that no notes shall
145 be issued to mature more than ten years from the date of
146 issuance;

147 (n) To issue renewal notes, except that no such renewal
148 notes shall be issued to mature more than ten years from
149 date of issuance of the notes renewed;

150 (o) To apply the proceeds from the sale of renewal notes
151 to the purchase, redemption or payment of the notes to be
152 refunded; and

153 (p) To make proper application to the West Virginia
154 economic development authority for the issuance of bonds,
155 in accordance with the provisions of article fifteen, chapter
156 thirty-one of the code.

157 The corporation shall have such additional powers as
158 may be necessary or appropriate for the exercise of the
159 powers herein conferred.

**§5C-1-11. Principal office of the corporation; account books;
directors' oath of office.**

1 (a) The corporation shall maintain its principal office in
2 the immediate vicinity of Charleston, West Virginia.

3 (b) The corporation shall at all times maintain complete
4 and accurate books of accounts.

5 (c) Each member of the board, before entering upon the
6 duties of his office, shall subscribe to an oath or affirmation

7 to support the constitution of the state of West Virginia and
8 to faithfully and impartially perform the duties imposed
9 upon him by this article.

§5C-1-13. Authority of the board of investments.

1 Subject to the provisions of this article, the board of
2 investments, on such terms and conditions as it deems
3 appropriate, may invest moneys, securities, and other assets
4 of the public employees retirement system in the form of
5 interest-bearing loans to a borrower, if at the time of the
6 commitment to make the loan, the board of investments
7 determines:

8 (1) That there exists an employment-generating plan
9 which:

10 (A) Is satisfactory to the board of investments;

11 (B) Has been developed in consultation with other
12 appropriate state agencies, including, but not limited to, the
13 department of labor and the office of community and
14 industrial development;

15 (C) Focuses upon the need to increase the number of
16 jobs available in this state; and

17 (D) Can be carried out by the borrower;

18 (2) That the loan is needed to assist the borrower to open
19 a new facility or expand an existing facility, in this state,
20 and that by meeting such need employment will be
21 increased in the state;

22 (3) That the borrower has submitted to the board of
23 investments a satisfactory operating plan demonstrating
24 the ability of the borrower to generate additional
25 employment at a level which may be maintained or
26 increased without additional loans under the provisions of
27 this article;

28 (4) That the board of investments has received such
29 assurances as it shall require that the operating plan is
30 realistic and feasible;

31 (5) That the borrower has submitted to the board of
32 investments a satisfactory financing plan which meets the
33 financial needs of the borrower as reflected in the operating
34 plan for the period covered by such plan;

35 (6) That the board of investments has received adequate
36 assurances regarding the availability of all financing, both
37 public and private, contemplated by the financing plan and

38 that such financing is adequate to meet the borrower's
39 projected financial needs during the period covered by the
40 financing plan;

41 (7) That none of the proceeds of a loan made under the
42 provisions of this article will be used to repay credit
43 extended or committed prior to the date the loan is made
44 under the provisions of this article; and

45 (8) That the financing plan submitted under subdivision
46 (5) of this section provides that expenditures under the
47 financing plan will reduce unemployment in this state.

CHAPTER 5E. VENTURE CAPITAL AUTHORITY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-1. Short title.

§5E-1-2. Declaration of policy.

§5E-1-3. Purposes.

§5E-1-4. Definitions.

§5E-1-5. Rules and regulations.

§5E-1-6. Certification of West Virginia capital companies.

§5E-1-7. Minimum standards of qualified West Virginia capital companies.

§5E-1-8. Tax credits.

§5E-1-9. Recaptures; unqualified investments.

§5E-1-10. Application requirements.

§5E-1-11. Disclaimer of liability of the state.

§5E-1-12. Qualified investments.

§5E-1-13. Restrictions on investment.

§5E-1-14. Conflict of interest.

§5E-1-15. Investment reporting and record keeping.

§5E-1-16. Examination.

§5E-1-17. Decertification.

§5E-1-1. Short title.

1 The article may be cited as the "West Virginia Capital
2 Company Act."

§5E-1-2. Declaration of policy.

1 (a) The Legislature finds and declares that:

2 (1) Economic insecurity due to unemployment is a
3 serious detriment to the health, safety, and general welfare
4 of the citizens of this state;

5 (2) Involuntary unemployment, with its resulting
6 burden of indigence, falls with crushing force upon
7 unemployed workers and ultimately on the state itself in the
8 form of public assistance and unemployment
9 compensation; and

10 (3) Unemployment causes a migration of West Virginia
11 workers and families seeking jobs and establishing homes
12 elsewhere which deprives this state of its most valuable
13 resource, its people, and reduces the tax base of this state
14 and of its local governments, impairing their ability to
15 provide services.

16 (b) The Legislature further finds that:

17 (1) The best method of combating unemployment and
18 protecting West Virginia against the loss of its people is by
19 promoting, stimulating, developing, rehabilitating and
20 revitalizing the business prosperity and economic welfare
21 of this state and its citizens; and

22 (2) To accomplish this goal, the Legislature must
23 encourage the formation of venture and equity capital in
24 West Virginia for use in diversifying, strengthening and
25 stabilizing the West Virginia economy by increasing West
26 Virginia employment and business opportunities while
27 protecting the people's constitutional right to a clean and
28 healthful environment.

29 (c) The Legislature also further finds that:

30 (1) Private investment of venture and equity capital in
31 the West Virginia economy will be encouraged and
32 promoted by making tax credits available to taxpayers
33 investing in West Virginia capital companies;

34 (2) Demands on state revenues restrict the financial
35 ability of this state to make unlimited tax credits available
36 for investment purposes and require that this state place
37 reasonable limits on the total amount of tax credits to be
38 made available for investment incentives; and

39 (3) Establishment of a rational tax credit program,
40 which gives priority to investments in capital companies in
41 the order in which they are qualified as such, will encourage
42 immediate investment in West Virginia businesses.

§5E-1-3. Purposes.

1 (a) The purpose of this article is to promote the
2 development of the human resources and the diversification
3 of the economy of West Virginia. The venture capital
4 generated by this article must be used to encourage and
5 assist the strengthening of the economy through loans,
6 equity investments, and other business transactions for
7 purposes of developing new business and industry in West

8 Virginia, rehabilitating existing business and industry, and
9 stimulating and assisting in the expansion of business
10 activities that promote and maintain the economic stability
11 of this state by providing maximum opportunities for
12 employment of West Virginians and improving the
13 standard of living of the people of this state.

14 (b) This article is aimed at:

15 (1) Increasing the availability of development capital in
16 order to encourage and assist in the creation, development
17 and expansion of businesses based in West Virginia;

18 (2) Developing, preserving, diversifying, expanding and
19 strengthening the agricultural, industrial and business base
20 of West Virginia's economy, particularly for those
21 businesses utilizing this state's technical, managerial and
22 research resources in domestic and international markets;
23 and

24 (3) Providing the residents of West Virginia with greater
25 opportunities to invest and participate in the economic
26 development and potential of this state.

§5E-1-4. Definitions.

1 As used in this article, the following terms shall have the
2 meanings ascribed to them in this section, unless the
3 context in which the term is used clearly requires another
4 meaning or a specific different definition is provided.

5 (a) "Board" means the board of directors of the West
6 Virginia industrial and trade jobs development
7 corporation, provided for in article two, chapter five-c of
8 this code.

9 (b) "Capital base" means equity capital or net worth.

10 (c) "Certified West Virginia capital company" means:

11 (1) A West Virginia business development corporation
12 created pursuant to article fourteen, chapter thirty-one of
13 this code; or

14 (2) A profit or nonprofit entity organized and existing
15 under the laws of this state, created for the purpose of
16 making venture or risk capital available to qualified
17 investments, that has been certified by the board.

18 (d) "Qualified investment" means a debt or equity
19 financing of a West Virginia business but only if the
20 business is engaged in one or more of the following
21 activities: Manufacturing; agricultural production or
22 processing; forestry production or processing; mineral

23 production or processing, except for conventional oil and
24 gas exploration; transportation; research and development
25 of products or processes associated with any of the
26 activities previously enumerated above; tourism; and
27 wholesale or retail distribution activities within the state.

28 (e) "Qualified West Virginia capital company" means a
29 West Virginia capital company that has been certified by
30 the board as a qualified capital company under the
31 provisions of section six of this article.

32 (f) "State" means the state of West Virginia.

§5E-1-5. Rules and regulations.

1 The board shall promulgate rules and regulations in
2 accordance with article three, chapter twenty-nine-a of this
3 code, to carry out the purposes and to include generally the
4 programs available, and the procedure and eligibility of
5 application relating to assistance under such programs.

§5E-1-6. Certification of West Virginia capital companies.

1 (a) The board shall certify West Virginia capital
2 companies commencing after the effective date of this
3 article. A company seeking to be certified as a West Virginia
4 capital company must make written application to the
5 board on forms provided by the board. The application
6 must contain the information required by section ten of this
7 article. Further, the certificate must specify the level of
8 capitalization of the company.

9 (b) The application shall set forth the applicant's
10 purpose.

§5E-1-7. Minimum standards of qualified West Virginia capital companies.

1 The board shall qualify West Virginia capital companies
2 as certified companies that have been capitalized at a
3 minimum level of one million dollars. Capitalization of the
4 company may be increased pursuant to regulation of the
5 board.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be increased
4 pursuant to regulation of the board.

5 (b) The total credits authorized by the board for all
6 companies may not exceed a total of ten million dollars each
7 fiscal year. The board shall allocate these credits to
8 qualified companies in the order that said companies are
9 certified as qualified capital companies.

10 (c) Any investor, including an individual, partnership
11 or corporation who makes a capital investment in a
12 qualified West Virginia capital company is entitled to a tax
13 credit equal to fifty percent of the investment. This credit
14 may be taken against any tax liability imposed pursuant to
15 article thirteen, twenty-one or twenty-four, chapter eleven
16 of this code until the first day of July, one thousand nine
17 hundred eighty-six and thereafter, to articles twenty-one or
18 twenty-four of said chapter. The credit for investments by a
19 partnership or by a corporation electing to be treated as a
20 Subchapter S corporation may be divided pursuant to
21 election of partners or shareholders.

22 (d) The tax credit allowed under this section is to be
23 credited against the taxpayer's tax liability for the taxable
24 year in which the investment in a qualified West Virginia
25 capital company is made. If the amount of the tax credit
26 exceeds the taxpayer's tax liability for the taxable year, the
27 amount of the credit which exceeds the tax liability may be
28 carried back or may be carried forward in accordance with
29 the provisions of section forty-six (b) of the Internal
30 Revenue Code of 1954, as amended.

31 (e) The tax credit provided for in this section is available
32 only to those taxpayers whose investment in a qualified
33 West Virginia capital company occurs after the first day of
34 July, one thousand nine hundred eighty-six.

§5E-1-9. Recaptures; unqualified investments.

1 If the amount invested by a taxpayer in a qualified West
2 Virginia capital company is not used by the company for
3 qualified investments, as provided in section twelve of this
4 article, the taxpayer is not subject to a recapture provision
5 for any credit claimed by him but the company is subject to
6 the civil penalty provided for in subsection (c), section
7 twelve of this article.

§5E-1-10. Application requirements.

1 Each company shall make application to the board on
2 forms provided therefor, which shall set forth:

- 3 (1) Capitalization level of capital company;
- 4 (2) Purpose of the company;
- 5 (3) Names of investors;
- 6 (4) A process for disclosing to investors the tax credit
7 available pursuant to this article. Such disclosure shall
8 clearly set forth that no tax credit will be available until the
9 certification of said company shall be granted by the board
10 and the disclosure of immunity of the state for damages is
11 provided to said investors; and
- 12 (5) The location of the escrow account which has been
13 established for investors for the period of time between the
14 investment and the certification of the board of a qualified
15 company.

§5E-1-11. Disclaimer of liability of the state.

1 The state of West Virginia shall not be liable to any
2 investor or qualified capital company as a result of this
3 article or any of the activities authorized herein by any
4 court of law.

§5E-1-12. Qualified investments.

- 1 (a) A qualified West Virginia capital company must use
2 its capital base to make qualified investments according to
3 the following schedule:
 - 4 (1) At least twenty percent of its capital base within the
5 first year of the date on which the certified company was
6 designated as qualified capital company by the board;
 - 7 (2) At least forty percent of its capital base within two
8 years of the date on which the certified company was
9 designated as a qualified capital company by the board; and
 - 10 (3) At least sixty percent of its capital base within three
11 years of the date on which the certified company was
12 designated as a qualified capital company by the board.
- 13 (b) The board shall annually audit the certified audit of
14 each qualified company, as required by section sixteen of
15 this article, and the results of said audit shall be used to
16 notify the tax commissioner of any companies that are not
17 in compliance with this section.
- 18 (c) A qualified West Virginia capital company that fails
19 to make qualified investments pursuant to subsection (a) of
20 this section shall pay to the tax commissioner a penalty
21 equal to all of the tax credits allowed to the taxpayers

22 investing in said company with interest at the rate of one
23 and one-half percent per month, compounded monthly,
24 from the date the tax credits were certified as allocated to
25 the qualified West Virginia capital company. The tax
26 commissioner shall give notice to the company of any
27 penalties under this section. The tax commissioner may
28 abate said penalty upon written request if the capital
29 company establishes reasonable cause for the failure to
30 make qualified investments. The tax commissioner shall
31 deposit any amounts received under this subsection in the
32 state general fund.

§5E-1-13. Restrictions on investment.

- 1 (a) No more than thirty percent of the equity raised by a
2 West Virginia capital company under this article may be
3 invested in any one West Virginia business.
- 4 (b) No portion of the equity raised by a West Virginia
5 capital company under this article shall be invested in a
6 business that is related to that West Virginia capital
7 company, or in any business that is owned or operated by, or
8 employs, any officer, investor, member of the board of
9 directors, or employee of that West Virginia capital
10 company, or the family of such person, unless the board of
11 directors of the West Virginia industrial and trade jobs
12 development corporation approves, in writing, of the
13 making of such investment. For purposes of this subsection,
14 relationships shall be determined in accordance with the
15 rules set forth in section 267 of the Internal Revenue Code of
16 1954, as amended.

§5E-1-14. Conflict of interest.

- 1 No officer, member or employee of the board shall be
2 financially interested, directly or indirectly, in any capital
3 company.

§5E-1-15. Investment reporting and record keeping.

- 1 (a) Each qualified West Virginia capital company shall
2 report to the tax commissioner and the board on a
3 semiannual basis:
 - 4 (1) The name of each investor in the qualified West
5 Virginia capital company who has applied for a tax credit;
 - 6 (2) The amount of each investor's investment;
 - 7 (3) The amount of the tax credit allowed to the investor

8 and the date on which the investment was made; and

9 (4) All qualified investments the company has made.

10 (b) The company shall provide each investor in a
11 qualified West Virginia capital company with a certificate
12 authorizing the tax credits, and a true copy of the certificate
13 shall be submitted with each taxpayer's tax return
14 requesting a credit under section eight of this article.

§5E-1-16. Examination.

1 (a) Annually each certified capital company shall cause
2 its books and records to be audited by an independent
3 certified public accountant in accordance with generally
4 accepted auditing and accounting principles. In addition to
5 the performance of a financial audit, the audit shall address
6 the methods of operation and conduct of the business of the
7 West Virginia capital company to determine compliance
8 with this article and that the funds received by the company
9 have been invested within the time limits required by this
10 article. Upon completion, a copy of the audit report shall be
11 certified and sent to the board.

12 (b) The board may examine, under oath, any of the
13 officers, directors, agents, employees or investors of a West
14 Virginia capital company regarding the affairs and
15 business of the company. The board may issue subpoenas
16 and subpoenas duces tecum and administer oaths. Refusal
17 to obey such a subpoena or subpoena duces tecum may at
18 once be reported to the circuit court of the county in which
19 the company is located or the persons subpoenaed reside
20 and the circuit court shall enforce obedience to the
21 subpoena or subpoena duces tecum in the manner provided
22 by law for compliance with a subpoena or subpoena duces
23 tecum issued by a circuit court of this state.

§5E-1-17. Decertification.

1 (a) If the examination conducted pursuant to section
2 sixteen discloses that a West Virginia capital company is
3 not in compliance with the provisions of this article, the
4 board may exercise any of the powers necessary and
5 appropriate to protect the board's interest.

6 (b) The board shall give a West Virginia capital
7 company written notice of any inadequacies in its
8 compliance with the provisions of this article, and specify a

9 period of time the company has to redress such
10 inadequacies. Failure within said time period to make
11 corrections will result in further action by the board
12 pursuant to this section.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

- §7-12-1. Establishment authorized; name; exceptions.
- §7-12-2. Purposes.
- §7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.
- §7-12-3a. Management and control of municipal authority vested in board; appointment and terms of members; vacancies; removal of members.
- §7-12-4. Qualification of members.
- §7-12-8. Incurring indebtedness; rights of creditors.
- §7-12-11. Participation and appropriations authorized; transfers and conveyances of property.
- §7-12-12. Contributions by county commissions, municipalities and others; funds and accounts; reports; audit and examination of books, records and accounts.
- §7-12-13. Sale or lease of property; reversion of assets upon dissolution.
- §7-12-14. Employees to be covered by workers' compensation.
- §7-12-15. Liberal construction of article.

§7-12-1. Establishment authorized; name; exceptions.

1 Except as hereinafter provided, the governing body of
2 every municipality and the county commission of every
3 county is hereby authorized to create and establish a public
4 agency to be known as a development authority. The name
5 of the authority shall contain the words "development
6 authority," together with the designation of the
7 municipality or the county within which such authority is
8 intended to operate. Nothing in this article contained,
9 however, shall be construed as permitting the governing
10 body of any municipality or county commission of any
11 county in which there exists, on the date on which this
12 article becomes effective, one or more public development
13 authorities, corporations or commissions, organized and
14 existing pursuant to an act or acts of the Legislature, either
15 local or general, and performing substantially the same or
16 similar functions as the development authorities herein
17 authorized, to create and establish such a development
18 authority until such time as all such other public

19 development authorities, corporations and commissions
20 cease operations in such municipality or county: *Provided,*
21 That nothing herein shall be construed to prohibit the
22 creation and establishment of a municipal development
23 authority when a county or regional development authority
24 exists, and any municipal development authority shall have
25 the exclusive right to exercise its powers granted pursuant
26 to this article within the boundaries of the municipality.

§7-12-2. Purposes.

1 The purposes for which the authority is created are to
2 promote, develop and advance the business prosperity and
3 economic welfare of the municipality or county for which it
4 is created, its citizens and its industrial complex; to
5 encourage and assist through loans, investments or other
6 business transactions in the locating of new business and
7 industry within the municipality or county and to
8 rehabilitate and assist existing businesses and industries
9 therein; to stimulate and promote the expansion of all kinds
10 of business and industrial activity which will tend to
11 advance business and industrial development and maintain
12 the economic stability of the municipality or county,
13 provide maximum opportunities for employment,
14 encourage thrift, and improve the standard of living of the
15 citizens of the county; to cooperate and act in conjunction
16 with other organizations, federal, state or local, in the
17 promotion and advancement of industrial, commercial,
18 agricultural and recreational developments within the
19 municipality or county; and to furnish money and credit,
20 land and industrial sites, technical assistance and such
21 other aid as may be deemed requisite to approved and
22 deserving applicants for the promotion, development and
23 conduct of all kinds of business activity within the
24 municipality or county.

**§7-12-3. Management and control of county authority vested in
board; appointment and terms of members;
vacancies; removal of members.**

1 The management and control of a county authority, its
2 property, operations, business and affairs shall be lodged in
3 a board of not fewer than twelve nor more than twenty-one
4 persons who shall be appointed by the county commission

5 and be known as members of the authority. One member
6 shall be appointed by the county commission to represent it
7 on the board. The city and town council of each
8 municipality located within the county shall submit to the
9 county commission the name of one representative to be
10 appointed to the board. Other members shall be appointed
11 by the county commission and shall include representatives
12 of business, industry and labor. The members of the
13 authority first appointed shall serve respectively for terms
14 of one year, two years and three years, divided equally or as
15 nearly equal as possible between these terms. Thereafter,
16 members shall be appointed for terms of three years each. A
17 member may be reappointed for such additional term or
18 terms as the appointing agency may deem proper. If a
19 member resigns, is removed or for any other reason his
20 membership terminates during his term of office, a
21 successor shall be appointed by the appointing agency to fill
22 out the remainder of his term. Members in office at the
23 expiration of their respective terms shall continue to serve
24 until their successors have been appointed and have
25 qualified. The appointing agency may at any time remove
26 its appointed member of the commission by an order duly
27 entered of record or by other action appropriate for such
28 appointing agency and may appoint a successor member for
29 any member so removed.

30 In addition to the appointing agencies hereinbefore
31 named, such other persons, firms, unincorporated
32 associations, and corporations, who reside, maintain
33 offices, or have economic interests, as the case may be, in the
34 county, shall be eligible to participate in and request the
35 county commission to appoint members to the development
36 authority as the said authority shall by its bylaws provide.

**§7-12-3a. Management and control of municipal authority
vested in board; appointment and terms of
members; vacancies; removal of members.**

1 The management and control of a municipal authority, its
2 property, operations, business and affairs shall be lodged in
3 a board of not fewer than twelve nor more than twenty-one
4 persons who shall be appointed by the governing body and
5 be known as members of the authority. One member of the
6 authority shall also be a member of the governing body

7 appointed to represent it on the board. Other members shall
8 be appointed by the governing body and shall include
9 representatives of business, industry and labor. The
10 members of the authority first appointed shall serve
11 respectively for terms of one year, two years and three
12 years, divided equally or as nearly equal as possible
13 between these terms. Thereafter, members shall be
14 appointed for terms of three years each. A member may be
15 reappointed for such additional term or terms as the
16 appointing agency may deem proper. If a member resigns, is
17 removed or for any other reason his membership terminates
18 during his term of office, a successor shall be appointed by
19 the appointing agency to fill out the remainder of his term.
20 Members in office at the expiration of their respective terms
21 shall continue to serve until their successors have been
22 appointed and have qualified. The appointing agency may
23 at any time remove its appointed member of the authority
24 by an order duly entered of record or by other action
25 appropriate for such appointing agency and may appoint a
26 successor member for any member so removed.

27 In addition to the appointing agencies hereinbefore
28 named, such other persons, firms, unincorporated
29 associations and corporations, who reside, maintain offices,
30 or have economic interests, as the case may be, in the
31 municipality, are eligible to participate in and request the
32 governing body to appoint members to the development
33 authority as the said authority by its bylaws provides.

§7-12-4. Qualifications of members.

1 All members of the board of the authority shall be citizens
2 of the county or municipality in which the authority is
3 intended to operate, and bona fide residents of the
4 municipality or county by which they are appointed.

§7-12-8. Incurring indebtedness; rights of creditors.

1 The authority may incur any proper indebtedness and
2 issue any obligations and give any security therefor which it
3 may deem necessary or advisable in connection with
4 carrying out its purposes as hereinbefore mentioned. No
5 statutory limitation with respect to the nature, or amount,
6 interest rate or duration of indebtedness which may be
7 incurred by municipalities or other public bodies shall

8 apply to indebtedness of the authority. No indebtedness of
9 any nature of the authority shall constitute an indebtedness
10 of the governing body of the municipality or county
11 commission of the municipality or county in which the
12 commission is intended to operate or any municipality
13 situated therein, or a charge against any property of said
14 county commission, municipalities, or other appointing
15 agencies. The rights of creditors of the authority shall be
16 solely against the authority as a corporate body and shall be
17 satisfied only out of property held by it in its corporate
18 capacity.

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

1 The governing body of a municipality and county
2 commission are hereby authorized and empowered to
3 appoint members of the said authority and the county
4 commission and any municipality therein, or any one or
5 more of them, jointly and severally, are hereby authorized
6 and empowered to contribute by appropriation from their
7 respective general funds not otherwise appropriated to the
8 cost of the operation and projects of the authority.

9 The county commission of the county or municipal
10 corporations therein are hereby authorized and empowered
11 to transfer and convey to the said authority property of any
12 kind acquired by said county commission or municipal
13 corporation for or adaptable to use in industrial, economic
14 and recreational development, such transfers or
15 conveyances to be without consideration or for such price
16 and upon such terms and conditions as the said county
17 commission or municipal corporation deems proper.

**§7-12-12. Contributions by county commissions, mu-
nicipalities and others; funds and accounts;
reports; audit and examination of books,
records and accounts.**

1 Contributions may be made to the authority from time to
2 time by the county commission of the county or any
3 municipal corporation therein, and by any persons, firms or
4 corporations which shall desire to do so. All such funds and
5 all other funds received by the authority shall be deposited
6 in such bank or banks as the authority may direct and shall

7 be withdrawn therefrom in such manner as the authority
8 may direct. The authority shall keep strict account of all its
9 receipts and expenditures and shall each quarter make a
10 quarterly report to the county commission and
11 municipalities containing an itemized statement of its
12 receipts and disbursements during the preceding quarter.
13 Within sixty days after the end of each fiscal year, the
14 authority shall make an annual report containing an
15 itemized statement of its receipts and disbursements for the
16 preceding year, and such annual report shall be published
17 as a Class I legal advertisement in compliance with the
18 provisions of article three, chapter fifty-nine of this code,
19 and the publication area for such publication shall be the
20 county in which the development authority is located. The
21 books, records and accounts of the authority shall be
22 subject to audit and examination by the office of the state
23 tax commissioner of West Virginia and by any other proper
24 public official or body in the manner provided by law.

§7-12-13. Sale or lease of property; reversion of assets upon dissolution.

1 In the event the board of the authority shall so determine,
2 the authority may lease or sell all of its property and
3 equipment on such terms and conditions as the authority
4 may fix and determine. Upon the dissolution of the
5 authority, all of its assets and property shall revert to and
6 become the property of the county or municipality for
7 which said authority was created.

§7-12-14. Employees to be covered by workers' compensation.

1 All employees of the authority eligible thereto are deemed
2 to be within the workers' compensation act of West
3 Virginia, and premiums on their compensation shall be paid
4 by the authority as required by law.

§7-12-15. Liberal construction of article.

1 It is the purpose of this article to provide for promotion,
2 development and advancement of the business prosperity
3 and economic welfare of the municipality or county, its
4 citizens and its industrial complex, and this article shall be
5 liberally construed as giving to the authority full and

6 complete power reasonably required to give effect to the
7 purposes hereof.

CHAPTER 11. TAXATION.

Article

13. Business and Occupation Tax.

13A. Severance Taxes.

23. Business Franchise Tax.

24. Corporation Net Income Tax.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-30. Tax credit for coal coking facilities; regulations.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-seven, notwithstanding any provisions of
3 this code to the contrary, any company granted a reduced
4 rate loan pursuant to section seven, article two, chapter
5 five-b of this code shall be allowed a credit against the tax
6 imposed by this article for a period of five years from the
7 date the reduced rate loan is issued.

8 (b) The tax commissioner may prescribe such
9 regulations as may be necessary to carry out the purposes of
10 this section.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-23. Tax credit for coal coking facilities; regulations.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-seven, notwithstanding any provisions of
3 this code to the contrary, any company granted a reduced
4 rate loan pursuant to section seven, article two, chapter
5 five-b of this code shall be allowed a credit against the tax
6 imposed by this article for a period of five years from the
7 date the reduced rate loan is issued.

8 (b) The tax commissioner may prescribe such
9 regulations as may be necessary to carry out the purposes of
10 this section.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-24. Tax credit for coal coking facilities; regulations.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-seven, notwithstanding any provisions of
3 this code to the contrary, any company granted a reduced
4 rate loan pursuant to section seven, article two, chapter

5 five-b of this code shall be allowed a credit against the tax
6 imposed by this article for a period of five years from the
7 date the reduced rate loan is issued.

8 (b) The tax commissioner may prescribe such
9 regulations as may be necessary to carry out the purposes of
10 this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-22. Tax credit for coal coking facilities; regulations.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-seven, notwithstanding any provisions of
3 this code to the contrary, any company granted a reduced
4 rate loan pursuant to section seven, article two, chapter
5 five-b of this code shall be allowed a credit against the tax
6 imposed by this article for a period of five years from the
7 date the reduced rate loan is issued.

8 (b) The tax commissioner may prescribe such
9 regulations as may be necessary to carry out the purposes of
10 this section.

CHAPTER 18. EDUCATION.

Article

26C. Institute for Public Affairs.

26D. Institute for International Trade Development.

ARTICLE 26C. INSTITUTE FOR PUBLIC AFFAIRS.

§18-26C-1. Institute for public affairs; creation and purposes.

§18-26C-2. Director's administrative control and supervision.

§18-26C-1. Institute for public affairs; creation and purposes.

1 (a) There is hereby created as an independent entity the
2 institute for public affairs, to be located and operated at
3 West Virginia University. The institute shall be under the
4 control and supervision of a director, which position is to be
5 filled by an individual, whose credentials include
6 accomplishments in the interdisciplinary academic fields
7 together with that of government. The director shall be
8 appointed by the president of West Virginia University. The
9 institute shall engage faculty from institutions of higher

10 learning throughout the state and shall cooperatively
11 develop a program with other such institutions. The terms
12 of such participation may be by contract, loan, part-time
13 basis or other such arrangement.

14 (b) The institute is directed to conduct independent
15 research and propose strategies and options on public
16 issues and policies upon its own initiative or as may be
17 requested by the executive or the Legislature.

18 (c) The institute is directed to establish priorities and
19 coordinate its public policy initiatives with the governor
20 and with the Legislature. To accomplish this purpose, there
21 is hereby created an advisory board to consist of four
22 members of the Legislature, two of whom shall be members
23 of the House of Delegates to be appointed by the Speaker
24 and two of whom shall be members of the Senate to be
25 appointed by the President; and four members of the
26 executive to be appointed by the governor. The director
27 shall serve as the chairman of the advisory board.

28 (d) The institute is directed to seek all other funds,
29 grants, and other sources of assistance from other agencies
30 of government as well as the private sector.

§18-26C-2. Director's administrative control and supervision.

1 The director shall have administrative control and
2 supervision of the institute.

ARTICLE 26D. INSTITUTE FOR INTERNATIONAL TRADE DEVELOPMENT.

§18-26D-1. Institute for international trade development; creation and purpose.

1 There is hereby created as an independent entity the
2 institute for international trade development, to be located
3 and operated at Marshall University. The institute is
4 established to facilitate faculty involvement in the
5 formation and continuation of international market entry
6 and development strategy, to provide assistance to state
7 businesses in exporting and attracting foreign investment,
8 and to engage in other activities designed to promote,
9 develop and stimulate export expansion and foreign direct
10 investment. The institute shall be under the control and
11 supervision of a director, who shall be appointed from
12 among the faculty by the president of Marshall University.

13 The institute shall engage faculty from institutions of
14 higher learning throughout the state and shall
15 cooperatively develop an export program with the other
16 such institutions. The terms of such participation may be by
17 contract, loan, part-time basis, or other such arrangement.
18 The institute shall develop with the board of regents and the
19 governor a program of student internships in international
20 business to place qualified students for academic credit
21 with businesses in West Virginia to help develop export
22 awareness and potential. The institute shall further provide
23 research and analysis on matters of international trade
24 upon request of the executive or the Legislature, and shall
25 initiate partnership grants, and proposals in the area of
26 international trade in accordance with the provisions of
27 article two-a, chapter five-b; and apply for and obtain
28 grants or funds from all available sources, private and
29 public.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-17a. Apprenticeship program.

§29-6-17b. Advisory board for the apprenticeship program.

§29-6-17a. Apprenticeship program.

1 (a) The civil service system shall develop and monitor
2 apprenticeship programs for all state agencies that have
3 employees working in apprenticeable trades which are, or
4 may be recognized by, the United States department of
5 labor, bureau of apprenticeship and training.

6 (b) These apprenticeship programs will be developed
7 and conducted in a manner that will assure meeting the
8 national minimum requirements of quality and be
9 registered with the United States department of labor,
10 bureau of apprenticeship and training.

11 (c) The director of the civil service commission, or his
12 designee, in cooperation with the participating appointing
13 authorities within each agency, shall develop and annually
14 revise by the thirty-first day of December a list of
15 employment classifications appropriate for apprenticeship
16 training, which may include, but not be limited to, the
17 following classifications: Computer service technicians;

18 legal assistants; computer systems analysts; computer
19 programmers; computer operators; office machine
20 repairers; physical therapy assistants; electrical engineers;
21 civil engineering technicians; peripheral edp equipment
22 operators; insurance clerks; medical, electrical and
23 electronic technicians; occupational therapists; surveyor
24 helpers; credit clerks, banking and insurance; physical
25 therapists; employment interviewers; mechanical
26 engineers; mechanical engineering technicians; and
27 compression and injection mold machine operators.

28 (d) The chief administrative officer of each agency in
29 cooperation with the director of the civil service
30 commission, or his designee, shall establish procedures for
31 the coordination of apprenticeship programs developed in
32 accordance with this section.

33 (e) Subject to the approval of the director of the civil
34 service commission and the procedures established, each
35 participating agency shall determine the location and
36 positions in which apprenticeships are to be established.

37 (f) The director, or his designee, shall make an annual
38 report to the Legislature and shall include in such report the
39 following:

40 (1) A review of the development and operation of
41 apprenticeship programs;

42 (2) The current list of apprenticeable classifications;

43 (3) A summary of the agencies and types of positions
44 involved;

45 (4) A summary of registered apprenticeships;

46 (5) The number of persons who applied for
47 apprenticeship positions under this section;

48 (6) The number of persons accepted into the
49 apprenticeship programs established in accordance with
50 this section;

51 (7) The number of persons who successfully completed
52 and received a certificate of completion from the United
53 States department of labor, bureau of apprenticeship and
54 training;

55 (8) The number of persons who failed to complete
56 apprenticeships in accordance with this section;

57 (9) The number of persons who remain employed after
58 successfully completing apprenticeships; and

59 (10) A summary of characteristics of applicants and

60 participants in the program deemed pertinent to the
61 director of the civil service commission.

62 (g) The recruitment, selection and training of
63 apprentices during their apprenticeship shall be without
64 discrimination because of race, color, religion, national
65 origin or sex. The commission will take affirmative action
66 to provide equal opportunity in apprenticeship programs
67 and will operate the program to assure equal employment in
68 apprenticeship.

69 (h) The director, or his designee, shall file a report on the
70 development of apprenticeship programs with the governor
71 and the Legislature on or before the first day of January,
72 one thousand nine hundred eighty-seven.

73 (i) No contract between the state and a vendor, whereby
74 persons who have participated in the apprenticeship
75 program are to be hired, may be approved by the attorney
76 general unless and until said contract contains a statement
77 that the vendor will not discriminate in employment or
78 public accommodation because of race, religion, color,
79 national origin, ancestry, sex, age, blindness or handicap of
80 any individual.

§29-6-17b. Advisory board for the apprenticeship program.

1 In order to better accomplish the goals of this program
2 an apprenticeship advisory board is established. Its
3 members shall include the commissioner of labor or a
4 designee, the commissioner of finance and administration
5 or a designee, the state superintendent of the department of
6 education or a designee, two employees of the state who are
7 covered under the civil service system, and one private
8 citizen, with the employee and citizen members to be
9 appointed by the governor. The employees and the private
10 citizen members shall serve without compensation for two
11 years, after which they may be reappointed.

12 The commissioner of labor shall call the first meeting of
13 the advisory board within three months of the effective date
14 for this program. At this meeting the chairman of the board
15 shall be elected by the board as a whole.

16 The advisory board shall meet at least semiannually, at
17 the call of the chairman, for the purpose of receiving,
18 reviewing and evaluating reports from the director of the
19 civil service commission on the achievements and

20 deficiencies of the program. The board may seek the advice
21 and counsel from appropriate members of the United States
22 department of labor who may be knowledgeable about such
23 apprenticeship programs. The board may also prepare
24 written recommendations to the governor on ways to
25 improve the apprenticeship program.

CHAPTER 31. CORPORATIONS.

Article

- 15. West Virginia Economic Development Authority.
- 18B. Mortgage and Industrial Development Investment Pool
- 19. West Virginia Community Infrastructure Authority.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

- §31-15-6. General powers of authority.
- §31-15-7. Loans to industrial development agencies for industrial development projects.
- §31-15-7b. Loans for construction of electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects; and export development, farm development, job development, forest development projects.
- §31-15-8. Loan application requirements; hearings.
- §31-15-9. Equipment loans.
- §31-15-23. Governing body; organization and meeting; quorum; powers.

§31-15-6. General powers of authority.

- 1 The authority, as a public corporation and governmental
- 2 instrumentality exercising public powers of the state, shall
- 3 have and may exercise all powers necessary or appropriate
- 4 to carry out the purposes of this article, including the
- 5 power:
 - 6 (a) To cooperate with industrial development agencies
 - 7 in efforts to promote the expansion of industrial,
 - 8 commercial, manufacturing and tourist activity in this
 - 9 state.
 - 10 (b) To determine, upon the proper application of an
 - 11 industrial development agency, whether the declared
 - 12 public purposes of this article have been or will be
 - 13 accomplished by the establishment by such agency of an
 - 14 industrial development project in this state.
 - 15 (c) To conduct examinations and investigations and to
 - 16 hear testimony and take proof, under oath or affirmation, at
 - 17 public or private hearings, on any matter relevant to this

18 article and necessary for information on the establishment
19 of any industrial development project.

20 (d) To issue subpoenas requiring the attendance of
21 witnesses and the production of books and papers relevant
22 to any hearing before such authority or one or more
23 members appointed by it to conduct any hearing.

24 (e) To apply to the circuit court having venue of such
25 offense to have punished for contempt any witness who
26 refuses to obey a subpoena, to be sworn or affirmed or to
27 testify or who commits any contempt after being summoned
28 to appear.

29 (f) To authorize any member of the authority to conduct
30 hearings, administer oaths, take affidavits and issue
31 subpoenas.

32 (g) To make, upon proper application of any industrial
33 development agency, loans to such agency for industrial
34 development projects, industrial subdivision projects and
35 industrial subdivision project improvements and to provide
36 for the repayment and redeposit of such loans in the manner
37 provided in this article.

38 (h) To sue and be sued, implead and be impleaded, and
39 complain and defend in any court.

40 (i) To adopt, use and alter at will a corporate seal.

41 (j) To make bylaws for the management and regulation
42 of its affairs.

43 (k) To appoint officers, agents, employees and servants.

44 (l) To make contracts of every kind and nature to
45 execute all instruments necessary or convenient for
46 carrying on its business.

47 (m) Without in any way limiting any other subdivision
48 of this section, to accept grants from and enter into
49 contracts and other transactions with any federal agency.

50 (n) To take title by foreclosure to any industrial
51 development project or any industrial subdivision project
52 where acquisition is necessary to protect any loan
53 previously made by the authority and to sell, transfer and
54 convey such project to any responsible buyer. In the event
55 such sale, transfer and conveyance cannot be effected with
56 reasonable promptness, the authority may, in order to
57 minimize financial losses and sustain employment, lease
58 the project to a responsible tenant. The authority shall not
59 lease an industrial development project or industrial

60 subdivision project, except under the conditions and for the
61 purposes cited in this section.

62 (o) To participate in any reorganization proceeding
63 pending pursuant to the United States Code (being the act
64 of Congress establishing a uniform system of bankruptcy
65 throughout the United States, as amended) or in any
66 receivership proceeding in a state or federal court for the
67 reorganization or liquidation of a responsible buyer or
68 responsible tenant. The authority may file its claim against
69 any such responsible buyer or responsible tenant in any of
70 the foregoing proceedings, vote upon any questions pending
71 therein which requires the approval of the creditors
72 participating in any reorganization proceeding or
73 receivership, exchange any evidence of such indebtedness
74 for any property, security or evidence of indebtedness
75 offered as a part of the reorganization of such responsible
76 buyer or responsible tenant or of any other entity formed to
77 acquire the assets thereof and may compromise or reduce
78 the amount of any indebtedness owing to it as a part of any
79 such reorganization.

80 (p) To borrow money and to issue its negotiable bonds,
81 security interests or notes and to provide for and secure the
82 payment thereof, and to provide for the rights of the holders
83 thereof, and to purchase, hold and dispose of any of its
84 bonds, security interests or notes.

85 (q) To sell, at public or private sale, any bond or other
86 negotiable instrument, security interests or obligation of
87 the authority in such manner and upon such terms as the
88 authority deems would best serve the purposes of this
89 article.

90 (r) To issue its bonds, security interests and notes
91 payable solely from the revenues or funds available to the
92 authority therefor; and the authority may issue its bonds,
93 security interests or notes in such principal amounts as it
94 shall deem necessary to provide funds for any purposes
95 under this article, including:

96 (i) The making of loans to approved industrial
97 development agencies.

98 (ii) The payment, funding or refunding of the principal
99 of, interest on, or redemption premiums on, any bonds,
100 security interests or notes issued by it whether the bonds,
101 security interests, notes or interest to be funded or refunded

102 have or have not become due.

103 (iii) The establishment or increase of reserves to secure
104 or to pay bonds, security interests, notes or the interest
105 thereon and all other costs or expenses of the authority
106 incident to and necessary or convenient to carry out its
107 corporate purposes and powers. Any bonds, security
108 interests or notes may be additionally secured by a pledge of
109 any revenues, funds, assets or moneys of the authority from
110 any source whatsoever.

111 (s) To issue renewal notes, or security interests, to issue
112 bonds to pay notes or security interests and, whenever it
113 deems refunding expedient, to refund any bonds by the
114 issuance of new bonds, whether the bonds to be refunded
115 have or have not matured except that no such renewal notes
116 shall be issued to mature more than ten years from date of
117 issuance of the notes renewed and no such refunding bonds
118 shall be issued to mature more than twenty-five years from
119 the date of issuance.

120 (t) To apply the proceeds from the sale of renewal notes,
121 security interests or refunding bonds to the purchase,
122 redemption or payment of the notes, security interests or
123 bonds to be refunded.

124 (u) To accept gifts or grants of property, funds, security
125 interests, money, materials, labor, supplies or services from
126 the United States of America or from any governmental
127 unit or any person, firm or corporation, and to carry out the
128 terms or provisions of, or make agreements with respect to,
129 or pledge, any gifts or grants, and to do any and all things
130 necessary, useful, desirable or convenient in connection
131 with the procuring, acceptance or disposition of gifts or
132 grants.

133 (v) To the extent permitted under its contracts with the
134 holders of bonds, security interests or notes of the authority,
135 to consent to any modification of the rate of interest, time of
136 payment of any installment of principal or interest, security
137 or any other term of any bond, security interests, note or
138 contract or agreement of any kind to which the authority is
139 a party.

140 (w) To sell security interests in the loan portfolio of the
141 authority. Such security interests shall be evidenced by
142 instruments issued by the authority. Proceeds from the sale
143 of security interests may be issued in the same manner and

144 for the same purposes as bond and note revenues.

145 (x) To procure insurance against any losses in
146 connection with its property, operations or assets in such
147 amounts and from such insurers as the authority deems
148 desirable.

149 (y) To take and hold security interests for equipment
150 loans as prescribed in this article.

151 (z) To make, upon proper application, loans for the
152 purposes and under the conditions provided in this article,
153 for electrical power generating facilities, natural gas
154 transmission lines, coal processing plants, other energy
155 projects, export development, farm development, job
156 development, forest development, and for industry
157 assistance corporation projects, and the industrial and
158 trade jobs development corporation projects, and to
159 provide for the repayment and redeposit of such loans in the
160 manner provided in this article: *Provided*, That no bonds
161 shall be issued for the constructing of electrical power
162 generating facilities, natural gas transmission lines or other
163 energy projects unless the same shall be specifically
164 provided for by an act of general law, after public notice
165 and public hearing.

166 (aa) To take title by foreclosure to any project, plant,
167 property or equipment where acquisition is necessary to
168 protect any loan previously made by the authority and to
169 sell, transfer and convey such project, plant, property or
170 equipment to any responsible buyer. In the event such sale,
171 transfer and conveyance cannot be effected with reasonable
172 promptness, the authority may in order to minimize
173 financial losses and sustain employment, lease a project to a
174 responsible tenant.

175 (bb) To borrow money for its purpose and issue bonds or
176 notes for the money and provide for the rights of the holders
177 of the bonds or notes, to secure the bonds or notes by a deed
178 of trust on, or an assignment or pledge of, any or all of its
179 property and property of the project, including any part of
180 the security for the project loans, and the authority may
181 issue its bonds and notes in such principal amounts as it
182 shall deem necessary to provide funds for any purposes
183 under this article, including the making of loans for the
184 purposes set forth in subdivision (z) of this section.

§31-15-7. Loans to industrial development agencies for industrial development projects.

1 When it has determined upon application of an industrial
2 development agency and upon hearing in the manner
3 hereinafter provided that establishment or acquisition of a
4 particular industrial development project has
5 accomplished or will accomplish the public purposes of this
6 article, the authority may contract to loan such agency up to
7 one hundred percent of the estimated cost of such project
8 when financed by bonds issued by the authority, or the
9 authority may contract to loan such agency an amount not
10 in excess of fifty percent of the cost or estimated cost of such
11 project, as established, to be established or proposed to be
12 acquired, when the project is not financed by bonds issued
13 by the authority, subject to the following conditions:

14 (a) The West Virginia economic development authority
15 shall make every reasonable effort to ensure that West
16 Virginia firms and West Virginia workers are used in such
17 projects.

18 (b) The authority shall determine that the industrial
19 development agency has obtained from other independent
20 and responsible sources, such as banks and insurance
21 companies, a firm commitment for all other funds over and
22 above the loan of the authority and such funds or property
23 as the agency may hold, necessary for payment of all the
24 estimated cost of establishing or acquiring the industrial
25 development project and that the sum of all these funds is
26 adequate to ensure completion and operation of the
27 industrial development project. The proceeds of any loan
28 made by the authority to the industrial development agency
29 pursuant to this subdivision (b) shall be used only for the
30 establishment or acquisition of industrial development
31 projects in furtherance of the public purposes of this article.

32 (c) The loan of the authority shall be for such period of
33 time and shall bear interest at such rate as the authority
34 determines and it shall be secured by the negotiable
35 promissory note of the industrial development agency and
36 by deed of trust on the industrial development project for
37 which the loan was made or by assignment of any deed of
38 trust and negotiable promissory note and other security
39 taken by the industrial development agency on the
40 industrial development project, such deed of trust and note,

41 assignment of deed of trust and note and other security to be
42 second and subordinate only to the deed of trust securing
43 the first lien obligation issued to secure the commitment of
44 funds from the independent and responsible sources and
45 used in the financing of the industrial development project.

46 Money loaned by the authority to an industrial
47 development agency shall be withdrawn from the fund and
48 paid over to the agency in such manner as is provided by
49 rules and regulations of the authority. The authority shall
50 deposit all payments of interest on loans and the principal
51 thereof in the fund.

52 Where any federal agency participating in the financing
53 of an industrial development project is not permitted to
54 take as security for such participation a deed of trust or
55 assignment of deed of trust and other security the lien of
56 which is junior to the deed of trust or assignment of deed of
57 trust and other security of the authority, the authority may
58 take as security for its loan to the industrial development
59 agency a deed of trust or assignment of deed of trust and
60 other security junior in lien to that of the federal agency.

***§31-15-7b. Loans for construction of electrical power
generating facilities, natural gas transmis-
sion lines, coal processing plants, other
energy projects; and export development,
farm development, job development, forest
development projects.**

1 (a) At the request of the governor or the appropriate
2 state agency or authority, the authority may lend money to
3 such office, agency or authority for the acquisition,
4 construction, improvement or alteration of projects for
5 electrical power generating facilities, natural gas
6 transmission lines, coal processing plants and other energy
7 projects.

8 (b) At the request of the department of commerce or the
9 office of community and industrial development, the
10 authority may lend money to any person or entity for the
11 acquisition, construction, improvement or alteration of any
12 project relative to export development, farm development,
13 job development and forest development.

14 (c) At the request of the West Virginia industry

*NOTE: This section was also amended by S. B. 525 which passed prior to
this act.

15 assistance corporation, the authority may lend money to
16 any person or entity for the acquisition, construction,
17 improvement or alteration of any project relative thereto.

18 (d) At the request of the West Virginia industrial and
19 trade jobs development corporation, the authority may lend
20 money to any person or entity for the acquisition,
21 construction, improvement or alteration of any project
22 relative thereto.

23 (e) A loan shall not be made unless the authority is
24 reasonably satisfied that the project will produce revenues
25 sufficient, together with any other revenues pledged, to
26 meet the principal and interest on the loan, other costs,
27 expenses and charges in connection with the loan and other
28 charges or obligations of the project which may be prior or
29 equal to the loan, promptly as they become due; that the
30 project is otherwise soundly financed; that the loan
31 application requirements of section eight of this article
32 have been satisfied; that the project will be owned and
33 operated by the state of West Virginia. A loan made
34 pursuant to this subsection shall not exceed the project
35 costs as determined by the authority. A loan shall be
36 secured in the manner required by the authority, shall be
37 repaid in a period and bear interest at a rate as determined
38 by the authority, which interest rate may be decreased or
39 increased so that it shall in no event be less than the rate
40 paid by the authority on notes, renewal notes or bonds
41 issued to fund the loan, and shall have such terms and
42 conditions as are required by the authority, all which shall
43 be set forth in a loan agreement and related documents as
44 required by the authority.

§31-15-8. Loan application requirements; hearings.

1 Prior to the loaning of any funds to an industrial
2 development agency for an industrial development project
3 or for an industrial subdivision project acquisition or
4 improvement, the authority shall receive from such agency
5 a loan application in such form as adopted by the authority.

6 (1) If the loan application is for an industrial
7 development project, the form shall contain at least the
8 following:

9 (a) A general description of the project and a general
10 description of the industrial, commercial, manufacturing or

11 tourist enterprise for which the project has been or will be
12 established.

13 (b) A legally sufficient description of all real estate
14 necessary for the project.

15 (c) Such plans and other documents as may be required
16 to show the type, structure and general character of the
17 project.

18 (d) A general description of the type, classes and
19 number of employees employed or to be employed in the
20 operation of the project.

21 (e) Cost or estimates of cost of establishing the project.

22 (f) A general description and statement of value of any
23 property, real or personal, of the industrial development
24 agency applied or to be applied to the establishment of
25 the project.

26 (g) Evidence of the arrangement made by the industrial
27 development agency for the financing of all costs of the
28 project.

29 (h) A general description of the responsible tenant to
30 which the industrial development agency has leased or will
31 lease the project or of the responsible buyer to which the
32 agency has sold or will sell the project.

33 (i) A general description of the form of lease or sales
34 agreement entered into or to be entered into between the
35 industrial development agency and its responsible tenant or
36 responsible buyer.

37 (j) Evidence that the establishment of the project will
38 not cause the removal of an industrial, commercial,
39 manufacturing or tourist facility from one area of the state
40 to another area of the state.

41 (2) If the loan application is for an industrial
42 subdivision project acquisition or improvement, the form
43 shall contain at least the following:

44 (a) A general description of the industrial subdivision
45 project and a general description of its adaptability to
46 industrial, commercial, manufacturing or tourist purposes,
47 including the type of industrial development project which
48 may be established thereon upon completion of the
49 acquisition or improvement for which the loan is requested.

50 (b) A legally sufficient description of the industrial
51 subdivision project.

52 (c) Such plans and other documents as may be required

53 to show the type, structure and general character of the
54 proposed industrial subdivision project acquisition or
55 improvement.

56 (d) Cost or estimates of cost of the proposed industrial
57 subdivision project acquisition or improvement.

§31-15-9. Equipment loans.

1 The authority may make loans for equipment as part of
2 the industrial development projects, industrial subdivision
3 projects, and projects for electrical power generating
4 facilities, natural gas transmission lines, coal processing
5 plants, other energy projects, export development, farm
6 development, job development, forest development,
7 industry assistance corporation projects and industrial and
8 trade jobs development corporation projects, and
9 improvements thereto, subject to the same application, loan
10 and bond procedures and provision as usually apply to
11 loans issued under the provisions of this article, or by an
12 unconditional letter of credit approved by the authority.
13 The real property in which a security interest is taken may
14 be the real property upon which the equipment is situate or
15 real property at a different location from the location of the
16 equipment. Such additional security shall be upon such
17 terms and in such amount satisfactory to the authority.

**§31-15-23. Governing body; organization and meeting;
quorum; powers.**

1 The governing body of the authority shall consist of the
2 members of the authority acting as a board, which shall
3 exercise all the powers given to the authority in this article.
4 The governor or his designated representative shall be
5 chairman of the board and its chief executive officer. On the
6 second Wednesday of July of each year, the board shall meet
7 to elect a secretary and a treasurer from among its own
8 members.

9 A majority of the members shall constitute a quorum for
10 the purpose of conducting business. Except in the case of a
11 loan application or unless the bylaws require a larger
12 number, action may be taken by majority vote of the
13 members present. Approval or rejection of a loan
14 application shall be made by majority vote of the full
15 membership of the board.

16 The board shall manage the property and business of the
17 authority and prescribe, amend and repeal bylaws and rules
18 and regulations governing the manner in which the
19 business of the authority is conducted.

20 The governor shall provide staff services to the authority
21 for administration of this article, including liaison between
22 the authority and the industrial development agencies and
23 related organizations and between the authority and other
24 state agencies whose facilities and services may be useful to
25 the authority in its work. The authority may reimburse any
26 state spending unit for any special expense actually
27 incurred in providing any service or the use of any facility to
28 the authority.

29 The authority shall employ an executive director and any
30 other personnel it determines necessary, and may appoint
31 its own counsel and legal staff, and retain such temporary
32 engineering, financial and other consultants or technicians
33 as may be required for any special study or survey
34 consistent with the provisions of this article.

**ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT
INVESTMENT POOL.**

**§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.**

1 (a) The West Virginia economic development authority
2 may use for any investments authorized by sections seven
3 and seven-a, article fifteen, chapter thirty-one of this code,
4 up to one half of the funds of the state mortgage and
5 industrial development investment pool: *Provided*, That
6 the economic development authority shall deposit with the
7 treasurer of the state for the credit of the state mortgage and
8 industrial development pool such notes, security interests
9 or bonds issued by the economic development authority
10 evidencing the indebtedness of the authority to the pool.

11 (b) Such notes, security interests or bonds issued by the
12 authority shall be secured by security equal to or better
13 than one of the three highest rating grades by an agency
14 which is nationally known in the field of rating corporate
15 securities: *Provided*, That notes, security interests or bonds

16 evidencing indebtedness of less than two million dollars
 17 may be secured by a letter of credit guarantee issued by a
 18 bank having an unsecured legal lending limit greater than
 19 one million dollars.

20 (c) The interest rate and the maturity dates of the notes,
 21 security interests or bonds held by the treasurer for the state
 22 mortgage and industrial development investment pool shall
 23 be determined by the economic development authority
 24 according to the provisions of section eleven, article fifteen,
 25 chapter thirty-one of this code: *Provided*, That such
 26 interest rate shall not be less than the prior four-week
 27 auction average yield for thirteen-week treasury bills and
 28 such rate shall be valid for a term of not more than three
 29 years: *Provided, however*, That the economic development
 30 authority may determine a variable rate of interest to be
 31 adjusted no less frequently than semiannually, and such
 32 variable interest rate shall not be less than the prior four-
 33 week auction average yield for thirteen-week treasury bills.

**ARTICLE 19. WEST VIRGINIA COMMUNITY INFRASTRUCTURE
 AUTHORITY.**

- §31-19-1. Short title.
- §31-19-2. Legislative findings and purposes.
- §31-19-3. Definitions.
- §31-19-4. West Virginia community infrastructure authority created; West Virginia community infrastructure board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses; duties and responsibilities of director and staff of authority.
- §31-19-5. Authority may finance community infrastructure projects; loans to or bond purchases from counties and municipalities shall be subject to terms of loan or bond purchase agreements.
- §31-19-6. Powers, duties and responsibilities of the authority generally.
- §31-19-7. Authority empowered to issue community infrastructure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
- §31-19-8. Trustee for bondholders; contents of trust agreement.
- §31-19-9. Legal remedies of bondholders and trustees.
- §31-19-10. Bonds and notes not debt of state, county, or municipality; expenses incurred pursuant to article.
- §31-19-11. Use of funds by authority; restrictions thereon.
- §31-19-12. Investment of funds by authority.
- §31-19-13. Reports by authority to governor and Legislature.
- §31-19-14. Community infrastructure bonds lawful investments.
- §31-19-15. Purchase and cancellation of notes and bonds.
- §31-19-16. Refunding bonds.
- §31-19-17. Exemption from taxation.

- §31-19-18. Financial interests in contracts prohibited; penalty.
§31-19-19. Meetings and records of authority to be kept public.
§31-19-20. Liberal construction of article.
§31-19-21. Severability.

§31-19-1. Short title.

- 1 This article shall be known as the "West Virginia
- 2 Community Infrastructure Authority Act."

§31-19-2. Legislative findings and purposes.

- 1 (a) The Legislature hereby finds and declares that
- 2 increasing requirements for essential public improvements
- 3 and escalating costs of providing such improvements have
- 4 created inordinate demands upon the financial resources of
- 5 counties and municipalities necessitating legislation to
- 6 enable counties and municipalities to attain a more
- 7 competitive position in capital markets.
- 8 (b) The Legislature hereby finds and declares further
- 9 that it is in the public interest and is the responsibility of the
- 10 state of West Virginia to foster and promote by all lawful
- 11 means the provision of adequate capital markets and
- 12 facilities for borrowing money by counties and
- 13 municipalities for the financing of public improvements
- 14 and the fulfillment of public purposes, and to make it
- 15 possible for counties and municipalities to obtain new or
- 16 additional sources of capital funds at acceptable interest
- 17 costs, including activities to encourage investor interest in
- 18 the purchase of bonds or notes of counties or municipalities
- 19 as sound and preferred securities for investments.
- 20 (c) The Legislature hereby finds and declares further
- 21 that it is in the public interest and is the responsibility of the
- 22 state of West Virginia to encourage counties and
- 23 municipalities to continue their independent undertakings
- 24 of public improvements and fulfillment of public purposes
- 25 and the financing thereof and to improve or enhance the
- 26 possibilities of counties and municipalities obtaining
- 27 funds, to the extent possible, at reduced interest costs, for
- 28 orderly financing of public improvements and fulfillment
- 29 of public purposes, particularly those counties or
- 30 municipalities not otherwise able to borrow for such
- 31 purposes during periods of need.
- 32 (d) The Legislature hereby finds and declares further
- 33 that it is in the public interest, in order to implement and aid

34 in the discharge of the responsibilities of the aforesaid, that
35 a state instrumentality be created as a public body
36 corporate with full powers to borrow money and issue its
37 bonds and notes to the end that funds obtained thereby may
38 be used for the purchase by such state instrumentality of the
39 bonds or notes of counties and municipalities or for the
40 purposes of making loans to the counties or municipalities
41 for community infrastructure projects, and that such state
42 instrumentality be granted all powers necessary or
43 appropriate to accomplish and carry out the aforesaid
44 public purposes and responsibilities of the state of West
45 Virginia in a manner to make it possible for counties or
46 municipalities to sell their bonds and borrow funds at as
47 low an interest rate as said instrumentality finds and
48 determines to be feasible.

49 (e) The Legislature further finds and declares that in
50 accomplishing these purposes, the West Virginia
51 community infrastructure authority, created and
52 established by this article, will be acting in all respects for
53 the benefit of the people of the state of West Virginia to
54 serve the public purposes of improving and otherwise
55 promoting their health, education, welfare, safety and
56 prosperity, and that the West Virginia community
57 infrastructure authority, so created and established, is
58 hereby empowered to act on behalf of the state of West
59 Virginia and its people in serving the aforesaid public
60 purposes for the benefit of the general public of said state.

§31-19-3. Definitions.

- 1 As used in this article, unless the context clearly requires
2 a different meaning:
- 3 (1) "Authority" means the West Virginia community
4 infrastructure authority created in section four of this
5 article, the duties, powers, responsibilities and functions of
6 which are specified in this article.
- 7 (2) "Board" means the West Virginia community
8 infrastructure authority board created in section four of
9 this article, which shall manage and control the West
10 Virginia community infrastructure authority.
- 11 (3) "Bond" or "community infrastructure revenue
12 bond" means a revenue bond or note issued by the West
13 Virginia community infrastructure authority to effect the

14 intents and purposes of this article.

15 (4) "Community infrastructure project" or "project"
16 means any project of a public nature which is considered a
17 part of the infrastructure of a county or municipality,
18 including, but not limited to, roads and other appurtenan-
19 ces to community or economic development, which are
20 specifically declared to be for a public purpose.

21 (5) "Cost" means, as applied to community
22 infrastructure projects, the cost of acquisition, repair,
23 renovation and construction thereof; the cost of acquisition
24 of all land, rights-of-way, property rights, easements,
25 franchise rights, and interests required by the county or
26 municipality for such acquisition, renovation, repair or
27 construction; the cost of demolishing or removing any
28 buildings or structures on land so acquired, including the
29 cost of acquiring any lands to which buildings or structures
30 may be moved; the cost of diverting highways, interchange
31 of highways, access roads to private property, including the
32 cost of land or easement therefor; the cost of all machinery,
33 furnishing, and equipment; all finance charges, and interest
34 prior to and during the construction and for no more than
35 eighteen months after completion of construction; the cost
36 of all legal services and expenses; the cost of all plans,
37 specifications, surveys and estimates of cost; all working
38 capital and other expenses necessary or incident to
39 determining the feasibility or practicability of acquiring,
40 renovating, repairing or constructing any such project; the
41 financing of such acquisition, renovation, or repair or
42 construction, including the amount authorized in the
43 resolution of the authority providing for the issuance of
44 community infrastructure revenue bonds to be paid into
45 any special funds from the proceeds of such bonds; and the
46 financing of the placing of any such project in operation, if
47 necessary. Any obligations or expenses incurred after the
48 effective date of this article by any county or municipality,
49 with the approval of the authority, for surveys, borings,
50 preparation of plans and specifications and other
51 engineering services in connection with the acquisition,
52 renovation, repair or construction of a project shall be
53 regarded as a part of the cost of such project and shall be
54 reimbursed out of the proceeds of grants, loans or
55 community infrastructure revenue bonds as authorized by

56 the provisions of this article.

57 (6) "Department" means the governor's office of
58 community and industrial development.

59 (7) "Revenue" means any money or thing of value
60 collected by, or paid to, the West Virginia community
61 infrastructure authority in connection with any community
62 infrastructure project or as principal of or interest, charges
63 or other fees on loans, or any other collections on loans
64 made by the West Virginia community infrastructure
65 authority to counties or municipalities to finance in whole
66 or in part the acquisition, renovation, repair or construction
67 of any community infrastructure project or projects, or
68 other money or property which is received and may be
69 expended for or pledged as revenues pursuant to this
70 article.

**§31-19-4. West Virginia community infrastructure authority
created; West Virginia community infrastructure
board created; organization of authority and
board; appointment of board members; their
term of office, compensation and expenses; duties
and responsibilities of director and staff of
authority.**

1 (a) There is hereby created the West Virginia
2 community infrastructure authority. The authority is a
3 governmental instrumentality of the state and a body
4 corporate. The exercise by the authority of the powers
5 conferred by this article and the carrying out of its purposes
6 and duties shall be deemed and held to be, and are hereby
7 determined to be, essential governmental functions and for
8 a public purpose.

9 The authority shall be controlled, managed and operated
10 by the five member board known as the West Virginia
11 community infrastructure board, which is hereby created.
12 The director of the governor's office of community and
13 industrial development, or his designee, the director of the
14 department of natural resources, or his designee, and the
15 commissioner of the department highways, or his designee,
16 shall be members ex officio of the board. The director of
17 the governor's office of community and industrial
18 development, or his designee, shall be the ex officio
19 chairman. Two members of the board shall be repre-
20 sentative of the general public, one of which shall have

21 had experience or a demonstrated interest in local
22 government. The two members who are not ex officio
23 members of the board shall be appointed by the governor,
24 by and with the advice and consent of the Senate, for initial
25 terms of three and six years, respectively. The successor of
26 each such appointed member shall be appointed for a term
27 of six years in the same manner as the original
28 appointments were made, except that any person appointed
29 to fill a vacancy occurring prior to the expiration of the term
30 for which his predecessor was appointed shall be appointed
31 only for the remainder of such term. Each board member
32 shall serve until the appointment and qualification of his
33 successor. The two appointed board members shall not at
34 any one time belong to the same political party. Appointed
35 board members may be reappointed to serve additional
36 terms, not to exceed two consecutive full terms. All
37 members of the board shall be citizens of the state. Each
38 appointed member of the board, before entering upon his
39 duties, shall comply with the requirements of article one,
40 chapter six of this code and give bond in the sum of twenty
41 thousand dollars in the manner provided in article two,
42 chapter six of this code. The governor may remove any
43 board member for cause as provided in article six, chapter
44 six of this code.

45 Annually the board shall elect one of its appointed
46 members as vice chairman, and shall appoint a secretary-
47 treasurer, who need not be a member of the board. Three
48 members of the board shall constitute a quorum and the
49 affirmative vote of three members shall be necessary for any
50 action taken by vote of the board. No vacancy in the
51 membership of the board shall impair the rights of a
52 quorum by such vote to exercise all the rights and perform
53 all the duties of the board and the authority. The person
54 appointed as secretary-treasurer, including a board
55 member if he is so appointed, shall give bond in the sum of
56 fifty thousand dollars in the manner provided in article two,
57 chapter six of this code.

58 The director of the governor's office of community and
59 industrial development or his designee, the director of the
60 department of natural resources or his designee, and the
61 commissioner of the department of highways or his
62 designee, shall not receive any compensation for serving as
63 board members. Each of the two appointed board members

64 of the board shall receive an annual salary of five thousand
65 dollars, payable in monthly installments. Each of the five
66 board members shall be reimbursed for all reasonable and
67 necessary expenses actually incurred in the performance of
68 his duties as a member of such board. All such expenses
69 incurred by the board shall be payable solely from funds of
70 the authority or from funds appropriated for such purpose
71 by the Legislature and no liability or obligation shall be
72 incurred by the authority beyond the extent for which
73 moneys are available from funds of the authority or from
74 such appropriations.

75 (b) There shall be a director of the authority appointed
76 by the board who shall supervise and manage the
77 community infrastructure authority, and the governor's
78 office of community and industrial development shall serve
79 as the staff for the authority. Except as otherwise provided
80 in this section, the duties and responsibilities of the director
81 and of the staff shall be established by the authority. At the
82 board's discretion, it may provide for the position of general
83 counsel, who shall be an employee of the authority, or for
84 the appointment of special counsel. As the board deems
85 necessary and desirable, it may at any time elect to change
86 its decision on the employment or appointment of a counsel.

87 (c) The director, or his designee, may employ or appoint
88 any staff members in addition to those provided by the
89 governor's office of community and industrial
90 development, including general or special counsel if the
91 position is established by the board. The number of
92 employees needed, the positions to be filled and their
93 salaries or wages shall be determined by the director with
94 the approval of the board, unless the board elects to not
95 require its approval. At any time the board may elect to
96 change its decision concerning approval of additional staff
97 hiring and salaries.

98 (d) The board shall meet at least quarterly, and more
99 often as it deems necessary. The director and any other staff
100 member or members as the director deems expedient shall
101 attend board meetings.

§31-19-5. Authority may finance community infrastructure projects; loans to or bond purchases from counties and municipalities shall be subject to terms of loan or bond purchase agreements.

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia community infrastructure
4 authority may make loans to counties and municipalities
5 for the acquisition, renovation, repair or construction of
6 community infrastructure projects by such counties and
7 municipalities, and may issue community infrastructure
8 revenue bonds of this state, payable solely from revenues, to
9 pay the cost of, or finance, in whole or in part, by loans to
10 counties and municipalities, such projects. A community
11 infrastructure project shall not be undertaken unless it has
12 been determined by the authority based upon information
13 provided to it by the county or municipality or other agency
14 charged by law with the responsibility of reporting to be
15 consistent with any applicable requirements of law. Any
16 resolution of the authority providing for making a loan or
17 bond purchase pursuant to this article shall include a
18 finding by the authority that such determinations have
19 been made. A loan or bond purchase agreement shall be
20 entered into between the authority and each county or
21 municipality to which a loan is made or from which bonds
22 are purchased for the acquisition, renovation, repair or
23 construction of a community infrastructure project, which
24 loan or bond purchase agreement shall include without
25 limitation the following provisions:

26 (1) The cost of such project, the amount of the loan or
27 bond purchase, the terms of repayment of such loan or bond
28 purchase and the security therefor;

29 (2) The specific purposes for which the proceeds of the
30 loan or bond purchase shall be expended, the procedures as
31 to the disbursements of loan or bond purchase proceeds and
32 the duties and obligations imposed upon the county or
33 municipality in regard to the construction, renovation,
34 repair or acquisition of the project;

35 (3) The agreement of the county or municipality to raise
36 the funds for repayment, through levy, pursuant to an
37 election pursuant to article one, chapter thirteen of this
38 code; and

39 (4) The agreement of the county or the municipality to
40 comply with all applicable laws, rules and regulations
41 issued by the authority or other state, federal or local bodies
42 in regard to the construction, repair, renovation or

43 acquisition of the project.

§31-19-6. Powers, duties and responsibilities of the authority generally.

1 The West Virginia community infrastructure authority is
2 hereby granted, has and may exercise all powers necessary
3 or appropriate to carry out and effectuate its corporate
4 purpose. The authority shall have the power and capacity
5 to:

6 (1) Adopt, and from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its affairs
8 and the conduct of its business and rules and regulations to
9 implement and make effective its powers and duties, such
10 rules and regulations to be promulgated in accordance with
11 the provisions of chapter twenty-nine-a of this code.

12 (2) Adopt an official seal.

13 (3) Maintain a principal office and, if necessary,
14 regional suboffices at locations properly designated or
15 provided.

16 (4) Sue and be sued in its own name and plead and be
17 impleaded in its own name, particularly to enforce the
18 obligations and covenants made under sections seven and
19 eight of this article. Any actions against the authority shall
20 be brought in the circuit court of Kanawha County, in
21 which the principal office of the authority shall be located.

22 (5) Establish and operate a revolving loan fund for the
23 purpose of making loans to counties and municipalities for
24 the acquisition, renovation, repair or construction of
25 community infrastructure projects by such counties or
26 municipalities; purchase the bonds of counties and
27 municipalities issued for the acquisition, renovation, repair
28 or construction of community infrastructure projects by
29 such county or municipality; and, in accordance with the
30 provisions of chapter twenty-nine-a of this code, adopt
31 rules and procedures for making such loans or purchasing
32 such bonds.

33 (6) Issue community infrastructure revenue bonds and
34 notes and community infrastructure revenue refunding
35 bonds of the state, payable as provided in section seven of
36 this article unless the bonds are refunded by refunding
37 bonds, for the purpose of making loans to or bond purchases
38 from counties or municipalities for one or more community

39 infrastructure projects or parts thereof.

40 (7) Acquire by gift or purchase, hold or dispose of real
41 and personal property in the exercise of its powers and
42 performance of its duties as set forth in this article.

43 (8) Make and enter into all contracts and agreements
44 and execute all instruments necessary or incidental to the
45 performance of its duties and the execution of its powers.

46 (9) Receive and accept from any federal agency, subject
47 to the approval of the governor, grants for or in aid of the
48 construction, repair, renovation or acquisition of
49 community infrastructure projects, and receive and accept
50 aid or contributions from any source of money, property,
51 labor or other things of value, to be held, used and applied
52 only for the purposes for which such grants and
53 contributions are made.

54 (10) Purchase property coverage and liability insurance
55 for any community infrastructure project and for any
56 offices of the authority, insurance protecting the authority
57 and its officers and employees against liability, if any, or
58 damage to property or injury to or death of persons arising
59 from its operations and any other insurance the authority
60 may agree to provide under any resolution authorizing the
61 issuance of community infrastructure revenue bonds or in
62 any trust agreement securing the same.

63 (11) Establish or increase reserves from moneys
64 received or to be received by the authority to secure or pay
65 the principal of and interest on bonds and notes issued by
66 the authority pursuant to this article or other law.

67 (12) Receive and disburse the proceeds of such general
68 obligation bonds of the state as may be allowed by law
69 pursuant to any resolution or act of the Legislature.

70 (13) To the extent permitted under its contracts with the
71 holders of bonds or notes of the authority, consent to
72 modification of the rate of interest, time and payment of
73 installment of principal or interest, security, or any other
74 term of a bond or note, contract or agreement of any kind to
75 which the authority is a party.

76 (14) Make grants to counties or municipalities for one or
77 more community infrastructure projects or parts thereof.

78 (15) Provide consultation services to municipalities or
79 counties in connection with the acquisition, renovation,
80 repair or construction of any community infrastructure
81 project.

- 82 (16) Establish and amend the criteria and qualifications
83 for the making of any loan to or the purchasing of any bond
84 from a county or municipality and the terms not
85 inconsistent with this article of any loan or bond purchase
86 agreement with any county or municipality.
- 87 (17) Do all acts necessary and proper to carry out the
88 powers expressly granted to the authority in this article.

**§31-19-7. Authority empowered to issue community infra-
structure revenue bonds, renewal notes and
refunding bonds; requirements and manner of
such issuance.**

1 The authority is hereby empowered to issue from time to
2 time community infrastructure revenue bonds and notes of
3 the state in such principal amounts as the authority deems
4 necessary to make loans to or bond purchases from counties
5 and municipalities for one or more community
6 infrastructure projects.

7 The authority may, from time to time, issue renewal
8 notes, issue bonds to pay such notes and whenever it deems
9 refunding expedient, refund any bonds by the issuance of
10 community infrastructure revenue refunding bonds by the
11 state pursuant to the provisions of section sixteen of this
12 article. Except as may otherwise be expressly provided in
13 this article or by the authority, every issue of its bonds or
14 notes shall be obligations of the authority payable out of the
15 revenues and reserves created for such purposes by the
16 authority which are expressly pledged for such payment,
17 without preference or priority of the first bonds issued,
18 subject only to any agreements with the holders of
19 particular bonds or notes pledging any particular revenues.

20 Such pledge shall be valid and binding from the time the
21 pledge is made and the revenues so pledged and thereafter
22 received by the authority shall immediately be subject to
23 the lien of such pledge without any physical delivery
24 thereof or further act and the lien of any such pledge shall
25 be valid and binding as against all parties having claims of
26 any kind in tort, contract or otherwise against the authority
27 irrespective of whether such parties have notice thereof.

28 All such bonds and notes shall have and are hereby
29 declared to have all the qualities of negotiable instruments.

30 The bonds and notes shall be authorized by resolution of

31 the authority, shall bear such date and shall mature at such
32 time, in case of any such note or any renewal thereof not
33 exceeding five years from the date of issue of such original
34 note, and in the case of any such bond not exceeding fifty
35 years from the date of issue, as such resolution may provide.
36 The bonds and notes shall bear interest at such rate or rates,
37 including variable rates, be in such denominations, be in
38 such form, either coupon or registered, carry such
39 registration privileges, be payable in such medium of
40 payment, in such place and be subject to such terms of
41 redemption as the authority may authorize. The bonds and
42 notes of the authority may be sold by the authority at public
43 or private sale, at or not less than the price the authority
44 determines. The bonds and notes shall be executed by the
45 chairman of the authority who may use a facsimile
46 signature. The official seal of the authority or a facsimile
47 shall be affixed thereto or printed thereon and attested,
48 manually or by facsimile signature by the secretary-
49 treasurer of the authority, and any coupons attached
50 thereto shall bear the signature or facsimile signature of the
51 chairman of the authority. In case any officer whose
52 signature, or a facsimile of whose signature appears on any
53 bonds, notes or coupons ceases to be such officer before
54 delivery of such bonds or notes, such signature or facsimile
55 is nevertheless sufficient for all purposes the same as if he
56 had remained in office until such delivery and in case the
57 seal of the authority has been changed after a facsimile has
58 been imprinted on such bonds or notes, such facsimile will
59 continue to be sufficient for all purposes.

60 Any resolution authorizing any bonds or notes or any
61 issue thereof may contain provisions (subject to such
62 agreements with bondholders or noteholders as may then
63 exist, which provisions shall be a part of the contract with
64 the holders thereof) as to pledging all or any part of the
65 revenues of the authority to secure the payment of the bonds
66 or notes or of any issue thereof; the use and disposition of
67 revenues of the authority; the setting aside of reserve funds,
68 sinking funds or replacement and improvement funds and
69 the regulation and disposition thereof; the crediting of the
70 proceeds of the sale of bonds or notes to and among the
71 funds referred to and provided for in the resolution
72 authorizing the issuance of the bonds or notes; the use,
73 lease, sale or other disposition of any assets of the authority;

74 limitations on the purpose to which the proceeds of sale of
75 bonds or notes may be applied; notes issued in anticipation
76 of the issuance of bonds; the agreement of authority to do all
77 things necessary for the authorization, issuance and sale of
78 such bonds in such amounts as may be necessary for the
79 timely retirement of such notes; limitation on the issuance
80 of additional bonds or notes; the terms upon which
81 additional bonds or notes may be issued and secured; the
82 refunding of outstanding bonds or notes; the procedure, if
83 any, by which the terms of any contract with bondholders or
84 noteholders may be amended or abrogated; the amount of
85 bonds or notes the holders of which must consent thereto
86 and the manner in which such consent may be given;
87 limitations on the amount of moneys to be expended by the
88 authority for operating, administrative or other expenses of
89 the authority securing any bonds or notes by a trust
90 agreement; and any other matter, of like or different
91 character, which in any way affects the security or
92 protection of the bonds or notes.

93 In the event that the sum of all reserves pledged to the
94 payment of such bonds or notes shall be less than the
95 minimum reserve requirements established in any
96 resolution or resolutions authorizing the issuance of such
97 bonds or notes, the chairman of the authority shall certify,
98 on or before the first day of December of each year, the
99 amount of such deficiency to the governor of the state for
100 inclusion, if the governor shall so elect, of the amount of
101 such deficiency in the budget to be submitted to the next
102 session of the Legislature for appropriation to the authority
103 to be pledged for payment of such bonds or notes: *Provided*,
104 That the Legislature shall not be required to make any
105 appropriations so requested, and the amount of such
106 deficiencies shall not constitute a debt or liability of the
107 state.

108 Neither the members of the authority nor any person
109 executing the bonds or notes shall be liable personally on
110 the bonds or notes or be subject to any personal liability or
111 accountability by reason of the issuance thereof.

§31-19-8. Trustee for bondholders; contents of trust agreement.

1 Any community infrastructure revenue bonds or notes or

2 community infrastructure revenue refunding bonds issued
3 by the authority under this article may be secured by a trust
4 agreement between the authority and a corporate trustee,
5 which trustee may be any trust company or banking
6 institution having the powers of a trust company within or
7 without this state. The authority shall promulgate rules and
8 regulations pursuant to article three, chapter twenty-nine-
9 a of this code establishing the method of choosing any such
10 trustee which shall be done by a public competitive bidding
11 procedure.

12 The authority shall, in all instances, seek to achieve the
13 highest possible rating for any community infrastructure
14 revenue bonds or notes or community infrastructure
15 revenue refunding bonds or notes.

16 Any such trust agreement may pledge or assign revenues
17 of the authority to be received. Any such trust agreement or
18 any resolution providing for the issuance of such bonds or
19 notes may contain such provisions for protecting and
20 enforcing the rights and remedies of the bondholders or
21 noteholders as are reasonable and proper and not in
22 violation of law, including the provisions contained in
23 section seven of this article and covenants setting forth the
24 duties of the authority in relation to provisions regarding
25 the payment of the principal of and interest, charges and
26 fees on loans made to, or bond purchases from, counties and
27 municipalities from the proceeds of such bonds or notes, the
28 custody, safeguarding and application of all moneys. Any
29 banking institution or trust company incorporated under
30 the laws of this state which may act as depository of the
31 proceeds of bonds or notes or of revenues shall furnish such
32 indemnifying bonds or pledge such securities as are
33 required by the authority. Any such trust agreement may
34 set forth the rights and remedies of the bondholders and
35 noteholders and of the trustee and may restrict individual
36 rights of action by bondholders and noteholders as
37 customarily provided in trust agreement or trust indentures
38 securing similar bonds. Such trust agreement may contain
39 such other provisions as the authority deems reasonable
40 and proper for the security of the bondholders or
41 noteholders. All expenses incurred in carrying out the
42 provisions of any such trust agreement may be treated as
43 part of the cost of the construction, renovation, repair or

44 acquisition of a community infrastructure project.

§31-19-9. Legal remedies of bondholders and trustees.

1 Any holder of community infrastructure revenue bonds
2 issued pursuant to this article or any of the coupons
3 appertaining thereto and the trustee under any trust
4 agreement, except the extent the rights given by this article
5 may be restricted by the applicable resolution or such trust
6 agreement, may by civil action, mandamus or other
7 proceedings protect and enforce any rights granted under
8 the laws of the state or granted under this article by the
9 trust agreement or by the resolution in the issuance of such
10 bonds, and may enforce and compel the performance of all
11 duties required by this article, pursuant to the trust
12 agreement or resolution, to be performed by the authority or
13 any officer thereof.

**§31-19-10. Bonds and notes not debt of state, county, or
municipality; expenses incurred pursuant to
article.**

1 Community infrastructure revenue bonds and notes and
2 community infrastructure revenue refunding bonds issued
3 pursuant to this article and any coupons in connection
4 therewith shall not constitute a debt or a pledge of the faith
5 and credit or taxing power of this state or of any county or
6 municipality of the state and the holders or owners thereof
7 shall have no right to have taxes levied by the Legislature or
8 taxing authority of any county or municipality for the
9 payment of the principal thereof or interest thereon, but
10 such bonds and notes shall be payable solely from the
11 revenues and funds pledged for their payment as authorized
12 by this article unless the notes are issued in anticipation of
13 the issuance of bonds or the bonds are refunded by
14 refunding bonds issued pursuant to this article which bonds
15 or refunding bonds shall be payable solely from revenues
16 and funds pledged for their payment as authorized by this
17 article. All such bonds and notes shall contain on the face
18 thereof a statement to the effect that the bonds or notes, as
19 to both principal and interest, are not debts of the state or
20 any county or municipality thereof, but are payable solely
21 from revenues and funds pledged for their payment.
22 All expenses incurred in the carrying out of the provisions

23 of this article shall be payable solely from funds provided
24 under the authority of this article. Such article does not
25 authorize the authority to incur indebtedness or liability on
26 behalf of or payable by the state or any county or
27 municipality thereof.

§31-19-11. Use of funds by authority; restrictions thereon.

1 All moneys, properties and assets acquired by the
2 authority whether as proceeds from the sale of community
3 infrastructure revenue bonds or as revenues or otherwise,
4 shall be held by it in trust for the purposes of carrying out its
5 powers and duties, and shall be used and reused in
6 accordance with the purposes and provisions of this article.
7 Such moneys shall at no time be commingled with other
8 public funds. Such moneys, except as otherwise provided in
9 any resolution authorizing the issuance of community
10 infrastructure revenue bonds or in any trust agreement
11 securing the same, or except when invested pursuant to
12 section twelve of this article, shall be kept in appropriate
13 depositories and secured as provided and required by law.
14 The resolution authorizing the issuance of such bonds of
15 any issue or of the trust agreement securing such bonds
16 shall provide that any officer to whom, or any banking
17 institution or trust company to which, such moneys are paid
18 shall act as trustee of such moneys and hold and apply them
19 for the purposes hereof, subject to the conditions this article
20 and such resolution or trust agreement provide.

§31-19-12. Investment of funds by authority.

1 Except as otherwise provided in any resolution
2 authorizing the issuance of community infrastructure
3 revenue bonds or in any trust agreement securing the same,
4 the authority is hereby authorized and empowered to invest
5 any funds not needed for immediate disbursement in any of
6 the following securities:
7 (1) Direct obligations of or obligations guaranteed by
8 the United States of America;
9 (2) Bonds, debentures, notes or other evidences of
10 indebtedness issued by any of the following agencies: Banks
11 for cooperatives; federal intermediate credit banks; federal
12 home loan bank system; Export-Import Bank of the United
13 States; federal land banks; the Federal National Mort-

- 14 gage Association or the Government National Mortgage
15 Association;
- 16 (3) Public housing bonds issued by public agencies or
17 municipalities and fully secured as to the payment of both
18 principal and interest by a pledge of annual contributions
19 under an annual contributions contract or contracts with
20 United States of America; or temporary notes issued by
21 public agencies or municipalities or preliminary loan notes
22 issued by public agencies or municipalities, in each case,
23 fully secured as to the payment of both principal and
24 interest by a requisition or payment agreement with United
25 States of America;
- 26 (4) Certificates of deposit secured by obligations of the
27 United States of America;
- 28 (5) Direct obligations of or obligations guaranteed by
29 the state of West Virginia;
- 30 (6) Direct and general obligations of any other state
31 within the territorial United States, to the payment of the
32 principal of and interest of which the full faith and credit of
33 such state is pledged: *Provided*, That at the time of their
34 purchase, such obligations are rated in either of the two
35 highest rating categories by nationally recognized bond-
36 rating agencies; and
- 37 (7) Any fixed interest bond, note or debenture of any
38 corporation organized and operating within the United
39 States: *Provided*, That such corporation shall have a
40 minimum net worth of fifteen million dollars and its
41 securities or its parent corporation's securities are listed on
42 one or more of the national stock exchanges: *Provided*,
43 *however*, That (i) such corporation has earned a profit in
44 eight of the preceding ten fiscal years as reflected in its
45 statements, (ii) such corporation has not defaulted in the
46 payment of principal or interest on any of its outstanding
47 funded indebtedness during its preceding ten fiscal years,
48 and (iii) the bonds, notes or debentures of such corporation
49 to be purchased are rated "AA" or the equivalent thereof or
50 better than "AA" or the equivalent thereof by at least two or
51 more nationally recognized rating services such as
52 Standard and Poor's, Dun & Bradstreet or Moody's.

§31-19-13. Reports by authority to governor and Legislature.

- 1 As soon as possible after the close of each fiscal year, the
2 authority shall make an annual report of its activities for

3 the preceding fiscal year to the governor and the
4 Legislature. Each such report shall set forth a complete
5 operating and financial statement covering the authority's
6 operations during the preceding fiscal year. The authority
7 shall cause an audit of its books and accounts to be made at
8 least once each fiscal year by certified public accountants.
9 The cost of such audit shall be treated as a part of the cost
10 of operation of the authority.

§31-19-14. Community infrastructure bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstanding,
3 all community infrastructure revenue bonds issued
4 pursuant to this article shall be lawful investments for the
5 West Virginia state board of investments and shall also be
6 lawful investments for banking institutions, societies for
7 savings, building and loan associations, savings and loan
8 associations, deposit guarantee associations, trust
9 companies, insurance companies, including domestic for
10 life and domestic not for life insurance companies.

§31-19-15. Purchase and cancellation of notes or bonds.

1 The authority, subject to such agreements with
2 noteholders or bondholders as may then exist, shall have
3 power, out of any funds available therefor, to purchase
4 notes or bonds of the authority.

5 If the notes or bonds are then redeemable, the price of
6 such purchase shall not exceed the redemption price then
7 applicable plus accrued interest to the next interest
8 payment date thereon. If the notes or bonds are not then
9 redeemable, the price of such purchase shall not exceed the
10 redemption price applicable on the first date after such
11 purchase upon which the notes or bonds become subject to
12 redemption plus accrued interest to such date. Upon such
13 purchase such notes or bonds shall be cancelled.

§31-19-16. Refunding bonds.

1 Any bonds issued hereunder and at any time outstanding
2 may at any time and from time to time be refunded by the
3 authority by the issuance of its refunding bonds in such
4 amount as it may deem necessary to refund the principal of
5 the bonds so to be refunded, together with any unpaid

6 interest thereon; to provide additional funds for the
7 purpose of the authority; and any premiums and
8 commissions necessary to be paid in connection therewith.
9 Any such refunding may be effected whether the bonds to
10 be refunded shall have then matured or shall thereafter
11 mature, either by sale of the refunding bonds and the
12 application of the proceeds thereof for the redemption of
13 the bonds for the bonds to be refunded thereby: *Provided,*
14 That the holders of any bonds so to be refunded shall not be
15 compelled without their consent to surrender their bonds
16 for payment or exchange prior to the date on which they are
17 payable or, if they are called for redemption, prior to the
18 date on which they are by their terms subject to redemption.
19 Any refunding bonds issued pursuant to this article shall be
20 payable from the revenues out of which the bonds to be
21 refunded thereby were payable, or from other moneys or the
22 principal of and interest on or other investment yield from,
23 investments or proceeds of bonds or other applicable funds
24 or moneys, including investments of proceeds of any
25 refunding bonds, and shall be subject to the provisions
26 contained in section seven of this article and shall be
27 secured in accordance with the provisions of sections seven
28 and eight of this article.

§31-19-17. Exemption from taxation.

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 residential, agricultural, recreational, economic,
6 commercial and industrial opportunities and is a public
7 purpose. As the construction, acquisition, repair or
8 renovation of community infrastructure projects will
9 constitute the performance of essential governmental
10 functions, the authority shall not be required to pay any
11 taxes or assessments upon any community infrastructure
12 project or upon any property acquired or used by the
13 authority or upon the income therefrom. Such bonds and
14 notes and all interests and income thereon shall be exempt
15 from all taxation by this state, or any county, municipality,
16 political subdivision or agency thereof, except inheritance
17 taxes.

§31-19-18. Financial interests in contracts prohibited; penalty.

1 No officer, member or employee of the authority shall be
2 financially interested, directly or indirectly, in any contract
3 of any person with the authority, or in the sale of any
4 property, real or personal, to or from the authority. This
5 section does not apply to contracts or purchases of property,
6 real or personal, between the authority and any
7 governmental agency. If any officer, member or employee of
8 the authority has such financial interests in the contract or
9 sale of property prohibited hereby, he shall be guilty of a
10 misdemeanor, and, upon conviction thereof, shall be fined
11 not more than one thousand dollars or imprisoned in the
12 county jail not more than one year, or both fined and
13 imprisoned.

§31-19-19. Meetings and records of authority to be kept public.

1 All meetings of the authority shall be open to the public
2 and the records of the authority shall be open to public
3 inspection at all reasonable times, except as otherwise
4 provided in this section. All final actions of the authority
5 shall be journalized and such journals shall also be open to
6 the inspection of the public at all reasonable times. Any
7 records or information relating to secret processes or secret
8 methods of manufacture or production which may be
9 obtained by the authority or other persons acting under
10 authority of this article are confidential and shall not be
11 disclosed.

§31-19-20. Liberal construction of article.

1 The provisions of this article are hereby declared to be
2 remedial and shall be liberally construed to effectuate its
3 purposes and intents.

§31-19-21. Severability.

1 If any section, part or provision of this article or the
2 application thereof to any person or circumstance is held
3 unconstitutional or invalid, such unconstitutionality or
4 invalidity shall not affect any other section, part or
5 provision of this article or its application and to this end the
6 provisions of this article are declared to be severable.

CHAPTER 59

(S. B. 260—By Senator Tucker)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to education; county board of education; sale of school property at public auction; rights of grantor of lands in rural communities; eliminate reverter clause in arms length transactions.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds.

1 If at any time the board shall ascertain that any build-
 2 ing or any land no longer shall be needed for school
 3 purposes, the board may sell, dismantle, remove or relo-
 4 cate any such buildings and sell the land on which they
 5 are located, at public auction, after proper notice, and on
 6 such terms as it orders, to the highest responsible bidder.
 7 But in rural communities, the grantor of the lands, his
 8 heirs or assigns, shall have the right to purchase at the
 9 sale, the land, exclusive of the buildings thereon, and
 10 the mineral rights, at the same price for which it was
 11 originally sold: *Provided*, That the sale to the board was
 12 not a voluntary arms length transaction for valuable
 13 consideration approximating the fair market value of the
 14 property at the time of such sale to the board: *Provided*,
 15 *however*, That this section shall not operate to invalidate
 16 any provision of the deed to the contrary. The board,
 17 by the same method prescribed for the sale of school build-
 18 ings and lands, may also lease for oil or gas or other
 19 minerals any lands or school sites owned in fee by it. The

20 proceeds of such sales and rentals shall be placed to the
21 credit of such fund or funds of the district as the board
22 may direct: *Provided further*, That the provisions of
23 this section concerning sale at public auction shall not
24 apply to boards of education selling or disposing of its
25 property for a public use to the state of West Virginia, or
26 its political subdivisions, including county commissions
27 or divisions thereof, for an adequate consideration without
28 considering alone the present commercial or market value
29 of the property.

CHAPTER 60

(Com. Sub. for H. B. 1193—By Delegate Conley and Delegate Overington)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen-b, relating to requiring the pledge of allegiance to the United States flag in public schools at the start of every instructional day; and requiring that certain students be excused therefrom.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15b. Pledge of allegiance to the flag.

1 Every instructional day in the public schools of this
2 state shall be commenced with a pledge of allegiance to
3 the flag of the United States. Pupils who do not wish
4 to participate in this exercise shall be excused from
5 making such pledge.

CHAPTER 61

(Com. Sub. for S. B. 462—By Senators Boettner and Chernenko)

[Passed March 6, 1986; in effect ninety days 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 seven, relating to additional funding for adult literacy education programs; coordinating such programs through the department of education, other state agencies and volunteer groups; declaring legislative intent; delineating program activities; providing for funding; authorizing state personal income tax voluntary contribution check-off; providing for disposition and use of funds; requiring annual report; and providing an effective date.

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 seven, to read as follows:

ARTICLE 7. ADULT LITERACY EDUCATION PROGRAM.

§18-7-1. Adult literacy education program.

§18-7-2. Disposition and use of funds.

§18-7-3. Contribution of portion of income tax refund to adult literacy education program fund.

§18-7-1. Adult literacy education program; legislative intent.

1 It is in the public interest that the adult citizens of this
2 state be literate so that the quality of their own lives may be
3 enhanced and they may contribute to the well-being and
4 advancement of the entire state through increased
5 productivity. The intent of this legislation is to provide
6 additional funding for the education of adults in the basic
7 literacy skills of reading, writing and computation.

8 Activities in this program include:

9 (a) Identification and recruitment of persons over the
10 age of twenty-one who are deficient in their basic literacy
11 skills;

12 (b) Establishment of a literacy outreach program using

13 tutors and teachers to educate individuals at locations
14 convenient to the adult learners, including, but not limited
15 to, work sites, schools, libraries, churches and community
16 centers. The literacy outreach programs shall be designed to
17 assist persons in achieving a level of functional literacy or
18 high school equivalency skill levels;

19 (c) Expansion of adult basic education programs;

20 (d) An increase in the number of full-time and part-time
21 volunteer tutors and teachers to provide these services; and

22 (e) Coordination of the efforts of the West Virginia
23 department of education, other appropriate state agencies
24 and volunteer groups.

§18-7-2. Disposition and use of funds.

1 The financing of the adult literacy education program
2 will be derived from a voluntary check-off and contribution
3 designation on state personal income tax return forms of a
4 portion or all of a taxpayer's refund. This financing shall be
5 supplemental to any existing revenues, legislative
6 appropriations, private or public grants, gifts or bequests
7 made available for this purpose.

8 Moneys made available pursuant to this section shall be
9 placed in an account of the West Virginia board of
10 education designated the "Adult Literacy Education
11 Program Fund" and expended solely for the purpose of
12 teaching adult residents of West Virginia the basic literacy
13 skills of reading, writing and computation pursuant to
14 section one of this article.

15 The state board of education shall furnish the Legislature
16 with a report of activities and expenditures under this
17 program by the fifteenth day of January of each year.

§18-7-3. Contribution of portion of income tax refund to adult literacy education program fund.

1 (a) Contributions to the adult literacy education
2 program fund will be derived, in part, from voluntary
3 contributions of a portion or all of a state tax refund due, as
4 designated by taxpayers on state personal income tax
5 return forms.

6 (b) Each West Virginia personal income tax return form
7 shall contain a designation as follows:

8 "ADULT LITERACY EDUCATION PROGRAM

9 Check if you wish to designate a portion of your tax
10 refund to this program:

11 \$1 () \$5 () \$10 () Other \$_____()

12 If joint return, check if spouse wishes to designate a
13 portion of tax refund:

14 \$1 () \$5 () \$10 () Other \$_____()”

15 Each individual taxpayer desiring to voluntarily
16 contribute to this program may so indicate by placing an
17 “X” in the appropriate box on the state personal income tax
18 return form. The contribution shall be credited to the adult
19 literacy education program fund.

20 (c) The tax commissioner shall determine by the first
21 day of July of each year the total amount designated
22 pursuant to this section and shall report that amount to the
23 state treasurer who shall credit that amount to the adult
24 literacy education program fund.

25 (d) The provisions of this section shall apply to tax
26 return forms filed on and after the first day of January, one
27 thousand nine hundred eighty-seven.

CHAPTER 62

(S. B. 567—By Senators Boettner, R. Williams and Spears)

[Passed March 8, 1986; in effect January 1, 1987. Approved by the Governor.]

AN ACT to amend article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to establishing a special account for the West Virginia rehabilitation center; formulation of a five-year plan for such center; and expenditures to implement plan.

Be it enacted by the Legislature of West Virginia:

That article ten-a, 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 six-a, to read as follows:

ARTICLE 10A. VOCATIONAL REHABILITATION.**§18-10A-6a. West Virginia rehabilitation center special account; expenditures.**

1 (a) There is hereby established in the state treasury
2 a separate account which shall be designated the "West
3 Virginia rehabilitation center special account." The direc-
4 tor of vocational rehabilitation shall deposit promptly into
5 the account all fees received for services provided by the
6 West Virginia rehabilitation center from whatever source,
7 including the federal government, state government or
8 from other third-party payers or personal payments.

9 (b) A five-year West Virginia rehabilitation center
10 long-range plan shall be developed by the director and
11 shall be adopted by the state board of vocational educa-
12 tion. The West Virginia rehabilitation center's long-range
13 plan shall be updated and revised at least every two
14 years.

15 (c) The director is authorized to expend the moneys
16 deposited in the West Virginia rehabilitation center spe-
17 cial account in accordance with federal laws and regula-
18 tions, and with the laws of this state as is necessary for
19 the development of the five-year center long-range plan
20 and subsequent revisions.

21 (d) The director is authorized to expend the moneys de-
22 posited in the West Virginia rehabilitation center special
23 account as provided in the center's long-range plan at
24 such times and in such amounts as the director determines
25 to be necessary for the purpose of maintaining or improv-
26 ing the delivery of rehabilitation center services or for
27 the purpose of maintaining or obtaining certification at
28 the rehabilitation center: *Provided*, That during the bud-
29 get preparation period which occurs prior to the con-
30 vening of the Legislature, the director shall submit for
31 inclusion in the executive budget document and budget
32 bill his recommended capital expenditures, recommended
33 priorities, estimated costs and request for appropriations
34 for maintaining or improving the delivery of vocational
35 rehabilitation services and for maintaining or obtaining
36 certification at the rehabilitation center in such amounts
37 as the director determines to be necessary to implement

38 the five-year rehabilitation center long-range plan and
39 any subsequent revisions thereto.

40 (e) The director shall make an annual report to the
41 Legislature on the status of the rehabilitation center
42 revenue account, including the previous year's expendi-
43 tures and projected expenditures for the next year.

CHAPTER 63

(H. B. 1241—By Delegate Leary and Delegate Blatnik)

[Passed February 4, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing a central registry of traumatic spinal cord or traumatic head injuries and requiring acute care facility to report spinal cord or head injuries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-15. Establishment of a central registry of traumatic spinal cord or traumatic head injury; acute care facility required to report spinal cord or head injury.

1 (a) The director shall establish and maintain a central
2 registry of persons who sustain spinal cord injury or
3 severe head injury other than through disease, whether
4 or not permanent disability results, in order to facilitate
5 the provisions of appropriate rehabilitative services by
6 the division or other state agencies to such persons.

7 (b) The current acute care facility shall report to the
8 director by the most expeditious means within seven
9 days after identification of any person sustaining such

10 an injury. The report shall contain the name and
11 residence of the person and the name of the current
12 acute care facility.

CHAPTER 64

(Com. Sub. for H. B. 2059—By Delegate Hoblitzell and Delegate Sattes)

[Passed March 8, 1986; in effect ninety days 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-two-d, relating to higher education; establishing student assistance loan program generally; declaring legislative purpose; defining terms; providing for eligibility, application and administrative approval; requiring cooperation between the board of regents, state treasurer and lending institutions; authorizing linked deposits by state treasurer with eligible lending institutions; setting limitations on linked deposit investments; requiring deposit agreements and certain loan terms; requiring quarterly reports; and providing that the state or the agencies are not liable for loan repayment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE LOAN PROGRAM.

- §18-22D-1. Legislative purpose.
- §18-22D-2. Definitions.
- §18-22D-3. Certification of eligibility; information as to other financial assistance; approval of maximum loan amount.
- §18-22D-4. Limitations on investment in linked deposits.
- §18-22D-5. Applications for loans; loan package.
- §18-22D-6. Acceptance or rejection of loan package; deposit agreement.
- §18-22D-7. Rate of loan; repayment.

§18-22D-8. Certification and monitoring of compliance; reports.

§18-22D-9. State, board of regents and state treasurer not liable.

§18-22D-1. Legislative purpose.

1 The Legislature finds that the percentage of the
2 population in this state attending college is substantially
3 lower than the national average; that higher education
4 in this age of advanced technology is a key element in
5 the efforts to invigorate and develop the economy of our
6 state; that opportunities for students attending a college
7 or university in this state are diminished because of
8 limited access to programs of financial assistance; and
9 that the cost of attending college has dramatically
10 increased and has become a great burden upon family
11 budgets.

12 It is therefore the policy of the Legislature to establish
13 a state higher education student assistance loan pro-
14 gram to guarantee that deserving residents of this state
15 have the opportunity to continue their education at an
16 approved institution of higher education of their choice
17 in this state.

§18-22D-2. Definitions.

1 The following words when used in this article have the
2 meaning hereinafter ascribed to them, unless the
3 context clearly indicates a different meaning:

4 (a) "Board" means the West Virginia board of
5 regents.

6 (b) "Eligible lending institution" or "institution"
7 means a financial institution that is eligible to make
8 commercial loans, is a public depository of state funds
9 and agrees to participate in the West Virginia higher
10 education student assistance loan program.

11 (c) "Eligible student" means any individual who:

12 (1) Is a citizen or eligible noncitizen of the United
13 States;

14 (2) Has been a resident of the state for at least one
15 year immediately preceding the date of application for
16 a West Virginia higher education student assistance
17 loan;

18 (3) Is currently enrolled in good standing or accepted
19 for enrollment at an approved institution of higher
20 education in this state of the student's choice; and

21 (4) Is certified by such institution in accordance with
22 section three of this article.

23 (d) "Linked deposit" means a certificate of deposit
24 placed by the state treasurer with an eligible lending
25 institution at three percent below current market rates,
26 as determined and calculated by the state treasurer,
27 provided the institution agrees to lend the value of such
28 deposit, according to the deposit agreement provided for
29 by this article, to eligible students at three percent
30 below the present borrowing rate applicable to each
31 such student at the time of the deposit of state funds in
32 the institution.

33 (e) "Approved institution of higher education in this
34 state" means nonprofit, degree-granting two-year and
35 four-year colleges and universities located in West
36 Virginia.

**§18-22D-3. Certification of eligibility; information as to
other financial assistance; approval of
maximum loan amount.**

1 (a) The board of regents shall have full authority to
2 administer the program in accordance with the provi-
3 sions of this article. In furtherance of such administra-
4 tion, the board shall approve institutions of higher
5 education in this state for participation in the loan
6 program, establish guidelines for use by such institu-
7 tions in determining which applicants are eligible
8 students and in calculating the maximum loan amounts,
9 and develop a uniform eligibility certification and
10 maximum loan amount form to be used by the applicant
11 and the approved institution of higher education in
12 determining and certifying eligibility and maximum
13 loan amounts. The board shall further provide informa-
14 tion as to the federal guaranteed student loan program
15 and other financial assistance which may be available
16 to the applicant, which information shall be conveyed to
17 such applicants by the approved institution of higher
18 education.

19 (b) Upon receipt of an applicant's certification form,
20 the approved institution of higher education shall review
21 such form, certify any student who meets the eligibility
22 guidelines promulgated by the board and indicate on
23 such form the maximum loan amount which may be
24 received by the applicant pursuant to this article. The
25 institution shall calculate such amount with considera-
26 tion to any other financial assistance which is or will be
27 received by the applicant and shall assist such applicant
28 in receiving such other financial assistance. In no case
29 shall the annual loan amount to an eligible student
30 exceed six thousand dollars for undergraduate study or
31 ten thousand dollars for graduate or professional study,
32 and the eligible student shall receive not more than five
33 such loans for undergraduate study and three such loans
34 for graduate or professional study. Any applicant who
35 is not certified as eligible shall be notified in writing as
36 to the reasons for which certification was not granted.

37 (c) Any applicant who is denied eligibility certifica-
38 tion or has a maximum loan amount approved which is
39 less than the applicant reasonably believes is required
40 for attendance at the approved institution of higher
41 education may request in writing to the board a hearing
42 on any such matter. The board may conduct such
43 hearing or may respond in writing as to the reasons such
44 hearing is denied. Any decision by the board regarding
45 eligibility or maximum loan amount shall be final.

§18-22D-4. Limitations on investment in linked deposits.

1 The state treasurer shall invest in linked deposits as
2 identified by the board through an approved applica-
3 tion, provided that at the time of placement of the linked
4 deposit, exclusive of the linked deposit program pro-
5 vided for in article one-a, chapter twelve of this code,
6 not more than two percent of the state's total investment
7 portfolio is so invested. The total amount initially
8 deposited in any one year shall not exceed twelve million
9 dollars, and the total amount so deposited at any one
10 time shall not exceed, in the aggregate, one hundred
11 twenty million dollars.

§18-22D-5. Applications for loans; loan package.

1 (a) An eligible lending institution that desires to
2 receive a linked deposit shall accept and review
3 applications for loans from applicants certified as
4 eligible students. The lending institution shall apply all
5 usual lending standards to determine the creditworth-
6 iness of each eligible student. In no case shall the
7 applicant request, nor the eligible lending institution
8 approve, an annual loan amount in excess of the
9 maximum amount indicated on the form certifying such
10 applicant as an eligible student.

11 (b) An eligible student shall certify on the loan
12 application that the reduced rate loan will be used
13 exclusively to attend an approved institution of higher
14 education in this state. Whoever knowingly makes a
15 false statement concerning such application shall be
16 prohibited from entering into the West Virginia higher
17 education student assistance loan program. Whoever
18 knowingly uses loan proceeds received pursuant to this
19 article for reasons other than attendance at an approved
20 institution of higher education shall be prohibited from
21 benefitting from the linked deposit, which deposit shall
22 be withdrawn upon maturity, and the loan shall revert
23 to the rate of market interest originally determined.

24 (c) Upon approval of all or any portion of the loan
25 amount requested for which a linked deposit is sought,
26 the eligible lending institution shall forward to the
27 board a linked deposit loan package, in such form and
28 manner as shall be prescribed by the state treasurer in
29 cooperation with the board. The package shall include
30 such information as may be needed by the board or the
31 treasurer, including the certification form and the
32 amount of the loan requested by the eligible student.
33 The eligible lending institution shall certify, for each
34 eligible student, the present borrowing rate applicable
35 to such student.

**§18-22D-6. Acceptance or rejection of loan package;
deposit agreement.**

1 (a) The board may approve or reject a linked deposit
2 loan package. Upon approval by the board of the linked
3 deposit loan package, the board shall forward such

4 approved application to the state treasurer, and the state
5 treasurer shall place certificates of deposit, within the
6 limitations provided for in section four of this article,
7 with the eligible lending institution at three percent
8 below current market rates, as determined and calcu-
9 lated by the state treasurer.

10 (b) The eligible lending institution shall enter into a
11 deposit agreement with the state treasurer, which shall
12 include requirements necessary to carry out the pur-
13 poses of this article. Such requirements shall reflect the
14 market conditions prevailing in the eligible lending
15 institution's lending area. The agreement may include
16 a specification of the period of time in which the eligible
17 lending institution is to lend funds after the placement
18 of a linked deposit and shall include provisions for the
19 certificates of deposit to be placed for up to two-year
20 maturities that may be renewed for periods up to two
21 years until such time as the loan has been completely
22 repaid, or ten and one-half years after the eligible
23 student's cessation of enrollment in the approved
24 institution of higher education to which the loan
25 proceeds were paid, whichever is sooner. Interest shall
26 be paid at the times determined by the state treasurer.

§18-22D-7. Rate of loan; repayment.

1 (a) Upon placement of a linked deposit with an
2 eligible lending institution, such institution is required
3 to lend such funds to each approved eligible student
4 listed in the linked deposit loan package required in
5 subsection (c), section five of this article, and in
6 accordance with the deposit agreement required by
7 subsection (b), section six of this article. The loan shall
8 be at three percent below the present borrowing rate
9 applicable to each eligible student.

10 (b) Upon request therefor and approval thereof, the
11 loan agreement may require repayment of interest only,
12 until such time as the eligible student commences
13 repayment of the principal. Such repayment of the
14 principal shall commence at or before such time as the
15 eligible student is no longer enrolled in the approved
16 institution of higher education for which the loan

17 proceeds were paid or within five years of receipt of the
18 loan, whichever is sooner: *Provided*, That an eligible
19 student who enrolls in graduate or professional school
20 subsequent to the enrollment for which a loan or loans
21 were received pursuant to this section may defer such
22 repayment time until completion or withdrawal from
23 the graduate or professional school.

24 (c) Notwithstanding the time in which the eligible
25 lending institution may provide for the repayment of the
26 loan, the linked deposit shall be terminated at the
27 maturity date next succeeding complete repayment or
28 ten and one-half years after cessation of enrollment,
29 whichever is sooner. The amount of interest on the loan
30 shall revert to the market rate originally determined at
31 such time as the linked deposit is withdrawn.

**§18-22D-8. Certification and monitoring of compliance;
reports.**

1 (a) A certification of compliance with any applicable
2 provisions of this article, in such form and manner as
3 shall be prescribed by the state treasurer in cooperation
4 with the board, shall be required of the eligible lending
5 institution.

6 The board of regents, in cooperation with the state
7 treasurer, shall monitor compliance by the eligible
8 student with the applicable provisions of this article and
9 may take whatever action may be deemed necessary in
10 furthering the intent of the student loan program.

11 (b) By the first day of January, April, July and
12 October of each year, the treasurer shall report on the
13 linked deposit program for the preceding calendar
14 quarter to the governor, the joint committee on govern-
15 ment and finance, and the board. The reports shall set
16 forth the linked deposits made by the state treasurer
17 under the program during the quarter and shall include
18 information regarding the nature, terms and amounts
19 of the loans upon which the linked deposits were based
20 and the eligible students to which the loans were made.

**§18-22D-9. State, board of regents and state treasurer not
liable.**

1 The state, the board of regents, and the state treasurer
 2 are not liable to any eligible lending institution in any
 3 manner for payment of the principal or interest on the
 4 loan to an eligible student. Any delay in payment or
 5 default on the part of an eligible student does not in any
 6 manner affect the deposit agreement between the
 7 eligible lending institution and the state treasurer.

CHAPTER 65

(Com. Sub. for H. B. 1164—By Delegate Sattes)

[Passed March 6, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article four, chapter eighteen-a of said code, relating to tax sheltered annuities for teachers and other education employees; broadening the authorization to include other investments which qualify for federal tax deferment; deleting the requirement that the payments be made to an insurance company; and deleting the obsolete reference to voluntary deposits to the teachers retirement board.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 25. TAX DEFERRED INVESTMENTS FOR TEACHERS AND OTHER EMPLOYEES.

§18-25-1. Authority to purchase tax deferred investments for teachers and other employees.

1 A county board of education, the teachers retirement
2 board, the West Virginia board of education and the
3 board of regents and their agencies may provide by
4 written agreement between any such board or agency
5 and any teacher or other employee to reduce the cash
6 salary payable to such teacher or other employee, and,
7 in consideration thereof, to pay an amount equal to the
8 amount of such reduction as premiums on an annuity
9 contract or payments on a custodial account or other
10 investment owned by such teacher or other employee,
11 which annuity contract, custodial account or other
12 investment is in such form and upon such terms as will
13 qualify the payments thereon for tax deferral under
14 the United States Internal Revenue Code. The amount
15 of such reduction shall not exceed the amount excludable
16 from income under section 403(b) of the United
17 States Internal Revenue Code, and amendments and
18 successor provisions thereto, and shall be considered a
19 part of the teacher's or employee's salary for all
20 purposes other than federal and state income tax.

21 The purchase of such tax deferred investment for a
22 teacher or other employee by a board of education, the
23 teachers retirement board, the West Virginia board of
24 education and the board of regents and their agencies
25 shall impose no liability nor responsibility whatsoever
26 on said boards or members thereof except to show that
27 the payments have been remitted for the purposes for
28 which deducted.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-12. Tax deferred investments for teachers and other employees.

1 For the purpose of this section, when an employee
2 shall have attained the age of eighteen years the said
3 employee may be eligible to participate in the defined
4 group plans.

5 A county board of education, the teachers retirement
6 board, the West Virginia board of education and the

7 board of regents of West Virginia and their agencies
8 may provide by written agreement between any such
9 board or agency and any teacher or other employee to
10 reduce the cash salary payable to such teacher or other
11 employee, and, in consideration thereof, to pay an
12 amount equal to the amount of such reduction as
13 premiums on an annuity contract or payments on a
14 custodial account or other investment owned by such
15 teacher or other employee, which annuity contract,
16 custodial account or other investment is in such form
17 and upon such terms as will qualify the payments
18 thereon for tax deferment under the United States
19 Internal Revenue Code. The amount of such reduction
20 shall not exceed the amount excludable from income
21 under section 403(b) of the United States Internal
22 Revenue Code, and amendments and successor provi-
23 sions thereto, and shall be considered a part of the
24 teacher's or employee's salary for all purposes other than
25 federal and state income tax.

26 The purchase of such tax deferred investment for a
27 teacher or other employee by a board of education, the
28 teachers retirement board, the West Virginia board of
29 education and the board of regents of West Virginia and
30 their agencies shall impose no liability nor responsibility
31 whatsoever on said boards or members thereof except
32 to show that the payments have been remitted for the
33 purposes for which deducted.

CHAPTER 66

(H. B. 1306—By Delegate Knight and Delegate Hoblitzell)

[Passed February 10, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the West Virginia board of regents; establishing board as a corporation; and enumerating general powers of board.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§18-26-3. West Virginia board of regents created; general powers; continuation.

1 There is hereby created a state agency to be known
2 as the West Virginia board of regents, which shall be
3 a corporation and as such may contract and be con-
4 tracted with, plead and be impleaded, sue and be sued,
5 and have and use a common seal.

6 After having conducted a performance audit through
7 its joint committee on government operations, pursuant
8 to section nine, article ten, chapter four of this code, the
9 Legislature hereby finds and declares that the West
10 Virginia board of regents should be continued and
11 reestablished. Accordingly, notwithstanding the provi-
12 sions of section four, article ten, chapter four of this
13 code, the West Virginia board of regents shall continue
14 to exist until the first day of July, one thousand nine
15 hundred eighty-eight.

CHAPTER 67

(H. B. 2135—By Delegate Sattes)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-eight-a, relating to West Virginia University; authorizing the board of regents to sell certain vacant property; and providing for the use of the proceeds therefrom.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-28a. Authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in Terra Alta.

1 (a) The Board of Regents is hereby authorized and
2 empowered to sell those parcels of land situate on the
3 Chestnut Ridge Road in Monongalia County, West
4 Virginia, bounded and described as follows:

5 Beginning at a hub in the edge of the Chestnut Ridge
6 Road along the boundary formerly belonging to Sam
7 Ivill; thence with Ivill, N 10 degrees 01' W 260.04 feet
8 to a hub, corner to the lands of Blanche Sayre found in
9 Deed Book No. 481, at Page 95; thence with Sayre, S
10 89 degrees 36' E 295.45 feet to a hub, corner to W. V.
11 Board of Regents in Deed Book No. 584, at Page 1;
12 thence with W. V. Board of Regents S 0 degrees 55' W
13 255.82 feet to a hub at the northern edge of the Chestnut
14 Ridge Road; thence along the northern edge of the
15 Chestnut Ridge Road, N 89 degrees 36' W 254.00 feet
16 to the place of beginning, containing 1.61 acres, more
17 or less, as surveyed by Triad Engineering Consultants
18 on 6/27/79.

19 (b) The board of regents is hereby further authorized
20 and empowered to sell those parcels of land situate in
21 Terra Alta, Preston County, West Virginia, bounded
22 and described as follows:

23 Those lots or parcels of real estate situated in Portland
24 District, Preston County, West Virginia, containing
25 48.28 acres recorded under Book 283, Page 217.

26 (c) Such sale shall be by public auction: *Provided,*
27 That prior to such action the board of regents shall have
28 the property appraised by two licensed appraisers and
29 shall not sell the property for less than the average of
30 the appraisals.

31 (d) The proceeds from the sale of the property
32 referred to shall be deposited in a special revenue
33 account from which the board of regents is hereby
34 authorized to expend the funds therefrom for develop-
35 ment of the Downtown Campus, at West Virginia
36 University, in Morgantown.

CHAPTER 68

(S. B. 231—By Senators Burdette, Holmes, Whittow, Colombo, Lucht, Yanero,
R. Williams, Spears, Craigo, Jarrell, Stacy, Sharpe, Cook, B. Williams,
Parker, Boley and Mr. Tonkovich, Mr. President)

[Passed March 8, 1986; in effect July 1, 1986. 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-six-b, relating to state institutions of higher education; requiring the board of regents to establish a complete, uniform personnel classification system for classified employees by a specified date; defining terms; providing a minimum monthly salary schedule for such classified employees; providing for the payment of such salary to be reduced proportionately based upon amount of funds available; providing for assignment of each classified employee to the appropriate class, job title and pay grade; providing for a six hundred dollar annual salary increase; providing for prorated salary increase for certain employees; providing an additional salary increase of thirty-six dollars for each year of experience, with adjustments thereto, for certain employees; authorizing merit increases and/or salary adjustments in accordance with certain provisions; providing for annual review of the personnel classification system; requiring annual reports; granting classified employees certain rights regarding classification; providing for hirings after the effective date of this article; and authorizing additional employment by mutual agreement.

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-six-b, to read as follows:

ARTICLE 26B. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

- §18-26B-1. Legislative purpose.
- §18-26B-2. Definitions.
- §18-26B-3. Higher education classified employee monthly salary schedule.
- §18-26B-4. Establishment of personnel classification system; assignment to classification and to salary schedule.
- §18-26B-5. Classified employee salary.
- §18-26B-6. Annual review of classifications and classification system; notice and reports required.
- §18-26B-7. Conferences regarding personnel classification.
- §18-26B-8. Hirings after effective date.
- §18-26B-9. Additional employment by mutual agreement; provision for board approval.

§18-26B-1. Legislative purpose.

1 The purpose of the Legislature in the enactment of this
 2 article is to require the board to establish, control, supervise
 3 and manage a complete, uniform system of personnel
 4 classification in accordance with the provisions of this
 5 article for all employees other than faculty and
 6 nonclassified employees at state institutions of higher
 7 education.

§18-26B-2. Definitions.

- 1 As used in this article:
- 2 (a) "Board" means the West Virginia board of regents;
 - 3 (b) "Classification" means a group of related job titles
 4 including, but not limited to, those which are differentiated
 5 by Roman numerals;
 - 6 (c) "Classified employee" means any regular full-time
 7 or regular part-time employee of the board who holds a
 8 position that is assigned a particular job title and pay grade
 9 in accordance with the personnel classification system
 10 established by the board;
 - 11 (d) "Nonclassified employee" means an individual who
 12 is responsible for policy formation at the institutional level
 13 or reports directly to the president: *Provided*, That the
 14 percentage of personnel placed in the category of
 15 "nonclassified" at any given institution may not exceed

16 four percent of the total number of employees of that
17 institution who are eligible for membership in any state
18 retirement system of the state of West Virginia or other
19 retirement plan authorized by the state. Final approval of
20 such placement shall rest with the board;

21 (e) "Institution" or "institutions" means the public
22 institutions of higher education within this state;

23 (f) "Job description" means the specific listing of duties
24 and responsibilities as determined by the board and
25 associated with a particular job title;

26 (g) "Job title" means the name of the position or job as
27 defined by board policy;

28 (h) "Merit increases and salary adjustments" means the
29 amount of additional salary increase allowed on a merit
30 basis or to rectify salary inequities or accommodate
31 competitive market conditions in accordance with policy
32 established by the board;

33 (i) "Pay grade" means the letter grade assigned by the
34 board to a particular job title and refers to the horizontal
35 column heading of the salary schedule established in
36 section three of this article;

37 (j) "Personnel classification system" means the process
38 of job evaluation adopted by the board by which job title,
39 job description, pay grade and placement on the salary
40 schedule are determined;

41 (k) "Salary" means the amount of compensation paid
42 through the state treasury per month to a classified
43 employee;

44 (l) "Schedule" or "salary schedule" means the grid of
45 monthly salary figures established in section three of this
46 article; and

47 (m) "Years of experience" means the number of years a
48 person has been an employee of the state of West Virginia
49 and refers to the vertical column heading of the salary
50 schedule established in section three of this article. For the
51 purpose of placement on the salary schedule pursuant to
52 said section three, employment for nine months or more
53 shall equal one year of experience, but no classified
54 employee may accrue more than one year of experience
55 during any given fiscal year. Employment for less than
56 full-time or less than nine months during any fiscal year
57 shall be prorated. For the purpose of determining the

58 amount of annual salary increase pursuant to subsection
 59 (b), section five of this article, employment for less than
 60 twelve months during any fiscal year shall be prorated. In
 61 accordance with rules and regulations established by the
 62 board, a classified employee may be granted additional
 63 years of experience not to exceed the actual number of years
 64 of prior, relevant work or experience at accredited
 65 institutions of higher education other than state
 66 institutions of higher education.

§18-26B-3. Higher education classified employee monthly salary schedule.

1 There is hereby established a state monthly salary
 2 schedule for classified employees consisting of a minimum
 3 monthly salary for each pay grade in accordance with years
 4 of experience: *Provided*, That payment of the minimum
 5 salary shall be subject to the availability of funds, and
 6 nothing in this article shall be construed to guarantee
 7 payment to any classified employee of the salary indicated
 8 on the schedule at the actual years of experience. The
 9 minimum salary herein indicated shall be prorated for
 10 regular part-time classified employees.

11 HIGHER EDUCATION

12 CLASSIFIED EMPLOYEE MONTHLY SALARY SCHEDULE

13 PAY GRADE

14 Years										
15 of										
16 Experi-	A	B	C	D	E	F	G	H	I	
17 ence										
18 0	861	921	985	1,054	1,127	1,206	1,294	1,393	1,504	
19 1	881	941	1,005	1,074	1,147	1,226	1,334	1,433	1,544	
20 2	901	961	1,025	1,094	1,167	1,246	1,374	1,473	1,584	
21 3	921	981	1,045	1,114	1,187	1,266	1,414	1,513	1,624	
22 4	941	1,001	1,065	1,134	1,207	1,286	1,454	1,553	1,664	
23 5	961	1,021	1,085	1,154	1,227	1,306	1,494	1,593	1,704	
24 6	981	1,041	1,105	1,174	1,247	1,326	1,534	1,633	1,744	
25 7	1,001	1,061	1,125	1,194	1,267	1,346	1,574	1,673	1,784	
26 8	1,021	1,081	1,145	1,214	1,287	1,366	1,614	1,713	1,824	
27 9	1,041	1,101	1,165	1,234	1,307	1,386	1,654	1,753	1,864	
28 10	1,066	1,126	1,190	1,259	1,332	1,411	1,704	1,803	1,914	
29 11	1,091	1,151	1,215	1,284	1,357	1,436	1,754	1,853	1,964	
30 12	1,116	1,176	1,240	1,309	1,382	1,461	1,804	1,903	2,014	

31	13	1,141	1,201	1,265	1,334	1,407	1,486	1,854	1,953	2,064
32	14	1,166	1,226	1,290	1,359	1,432	1,511	1,904	2,003	2,114
33	15	1,191	1,251	1,315	1,384	1,457	1,536	1,954	2,053	2,164
34	16	1,216	1,276	1,340	1,409	1,482	1,561	2,004	2,103	2,214
35	17	1,241	1,301	1,365	1,434	1,507	1,586	2,054	2,153	2,264
36	18	1,266	1,326	1,390	1,459	1,532	1,611	2,104	2,203	2,314
37	19	1,291	1,351	1,415	1,484	1,557	1,636	2,154	2,253	2,364
38	20	1,316	1,376	1,440	1,509	1,582	1,661	2,204	2,303	2,414

HIGHER EDUCATION

CLASSIFIED EMPLOYEE MONTHLY SALARY SCHEDULE

PAY GRADE

42	Years									
43	of									
44	Experi-	J	K	L	M	N	O	P	Q	R
45	ence									
46	0	1,629	1,770	1,929	2,109	2,312	2,543	2,805	3,103	3,443
47	1	1,669	1,810	1,969	2,169	2,372	2,603	2,865	3,163	3,503
48	2	1,709	1,850	2,009	2,229	2,432	2,663	2,925	3,223	3,563
49	3	1,749	1,890	2,049	2,289	2,492	2,723	2,985	3,283	3,623
50	4	1,789	1,930	2,089	2,349	2,552	2,783	3,045	3,343	3,683
51	5	1,829	1,970	2,129	2,409	2,612	2,843	3,105	3,403	3,743
52	6	1,869	2,010	2,169	2,469	2,672	2,903	3,165	3,463	3,803
53	7	1,909	2,050	2,209	2,529	2,732	2,963	3,225	3,523	3,863
54	8	1,949	2,090	2,249	2,589	2,792	3,023	3,285	3,583	3,923
55	9	1,989	2,130	2,289	2,649	2,852	3,083	3,345	3,643	3,983
56	10	2,039	2,180	2,339	2,724	2,927	3,158	3,420	3,718	4,058
57	11	2,089	2,230	2,389	2,799	3,002	3,233	3,495	3,793	4,133
58	12	2,139	2,280	2,439	2,874	3,077	3,308	3,570	3,868	4,208
59	13	2,189	2,330	2,489	2,949	3,152	3,383	3,645	3,943	4,283
60	14	2,239	2,380	2,539	3,024	3,227	3,458	3,720	4,018	4,358
61	15	2,289	2,430	2,589	3,099	3,302	3,533	3,795	4,093	4,433
62	16	2,339	2,480	2,639	3,174	3,377	3,608	3,870	4,168	4,508
63	17	2,389	2,530	2,689	3,249	3,452	3,683	3,945	4,243	4,583
64	18	2,439	2,580	2,739	3,324	3,527	3,758	4,020	4,318	4,658
65	19	2,489	2,630	2,789	3,399	3,602	3,833	4,095	4,393	4,733
66	20	2,539	2,680	2,839	3,474	3,677	3,908	4,170	4,468	4,808

§18-26B-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

1 Before the first day of July, one thousand nine hundred
 2 eighty-six, the board shall establish by board policy a

3 system of job classifications, each classification to consist
4 of related job titles and corresponding job descriptions for
5 each position within a classification, together with the
6 designation of an appropriate pay grade for each job title.

7 By such date and with consideration to recommendations
8 of the institutions, the board shall furnish each classified
9 employee written confirmation of the assignment to the
10 appropriate classification, job title and pay grade and of the
11 proper placement on the salary schedule pursuant to
12 section three of this article notwithstanding the actual
13 salary paid. Such assignment may be appealed in
14 accordance with article twenty-nine of this chapter:
15 *Provided*, That nothing herein shall nullify or void prior to
16 the first day of January, one thousand nine hundred eighty-
17 seven, any personnel classification system in effect on the
18 effective date of this article.

§18-26B-5. Classified employee salary.

1 (a) Each classified employee who is employed by the
2 board on the effective date of this article shall receive for
3 the same employment at the same pay grade during the
4 fiscal year commencing on the first day of July, one
5 thousand nine hundred eighty-six, and thereafter, a
6 monthly salary which is at least equal to the final monthly
7 salary paid such classified employee for the fiscal year
8 commencing on the first day of July, one thousand nine
9 hundred eighty-five, and an annual salary increase of six
10 hundred dollars in addition thereto, to be paid in equal
11 installments within the regular pay periods. Such increase
12 shall be prorated for regular part-time employees or those
13 employed for less than a twelve-month period.

14 (b) Commencing with the fiscal year beginning on the
15 first day of July, one thousand nine hundred eighty-six, and
16 each fiscal year thereafter, each classified employee with
17 three or more years of experience shall receive an annual
18 salary increase equal to thirty-six dollars times the
19 employee's years of experience, less any incremental salary
20 increase granted in a prior fiscal year and actually
21 incorporated into and becoming an integral part of base
22 salary prior to fiscal year one thousand nine hundred
23 eighty-seven: *Provided*, That such annual salary increase
24 shall not exceed the amount granted for the maximum of

25 twenty years of experience. These incremental increases
26 shall be in lieu of any salary increase received pursuant to
27 section two, article five, chapter five of this code; shall be in
28 addition to any across-the-board, cost-of-living or
29 percentage salary increases which may be granted in any
30 fiscal year by the Legislature; and shall be paid in equal
31 installments within the regular pay periods.

32 (c) Each classified employee whose monthly salary
33 under subsections (a) and (b) of this section is less than the
34 minimum monthly salary for zero years of experience for
35 the appropriate pay grade as set forth in section three of this
36 article shall receive for the fiscal year commencing on July
37 first, one thousand nine hundred eighty-six, additional
38 compensation such that the monthly salary is at least the
39 minimum amount prescribed for the appropriate pay grade
40 at zero years of experience: *Provided*, That such amounts
41 may be reduced proportionately based upon the amount of
42 funds available for such purpose.

43 (d) Funds remaining after increasing the monthly salary
44 of each classified employee to at least the minimum amount
45 prescribed for the appropriate pay grade at zero years of
46 experience shall be used to place classified employees on
47 the salary schedule at their appropriate years of experience:
48 *Provided*, That such amount may be reduced
49 proportionately based upon the amount of funds available
50 for such purposes.

51 (e) Any classified employee may receive merit increases
52 and/or salary adjustments in accordance with policies
53 established by the board: *Provided*, That funds for such
54 increases and/or adjustments shall be distributed in
55 accordance with board policy and shall be available to all
56 state institutions of higher education on an equitable basis.

57 (f) The current monthly salary of any classified
58 employee may not be reduced by the provisions of this
59 article nor by any other action inconsistent with the
60 provisions of this article, and nothing in this article shall be
61 construed to prohibit promotion of any classified employee
62 to a job title carrying a higher pay grade if such promotion is
63 in accordance with the provisions of this article and the
64 personnel classification system established by the board.

§18-26B-6. Annual review of classifications and classification system; notice and reports required.

1 Each institution shall review annually each job
2 description in relationship to the assigned duties and
3 responsibilities, current job title and pay grade of each
4 classified employee of that institution. Based upon the data
5 collected through such review, each institution shall
6 determine which, if any, of its classified employees should
7 be recommended for a change in job title in order to
8 conform to the personnel classification system of the board:
9 *Provided*, That any classified employee filling a position or
10 carrying out the duties and responsibilities of a position
11 normally assigned a higher pay grade in accordance with
12 the personnel classification system established by the board
13 shall be recommended for a change in job title or shall be
14 returned immediately to the duties and responsibilities
15 outlined in such employee's appropriate job description.

16 Each institution shall submit to the board by the first day
17 of September, one thousand nine hundred eighty-six, and
18 each year thereafter, a report which shall include the steps
19 being taken to ensure proper employee classification in
20 accordance with the appropriate job titles and pay grades
21 as established by the board, any recommended changes in
22 job title, the justification for such recommendations, the
23 effect of such changes on existing personnel, and the fiscal
24 impact thereof.

25 Each institution also may submit, as part of its annual
26 report to the board, recommendations for alterations in job
27 descriptions or classifications, changes in corresponding
28 pay grades, or creation of new job titles or classifications.
29 Such changes, if approved by the board, shall be made a
30 part of the personnel classification system of the board and
31 shall be applied uniformly at all institutions: *Provided*,
32 That when necessary, the board may order changes in
33 classifications or changes in job titles upon its own
34 authority and shall notify the institutions of such changes
35 within thirty days.

36 The board, upon receipt and review of the annual report
37 submitted by each institution, shall notify the reporting
38 institution by the first day of December, one thousand nine
39 hundred eighty-six, and each year thereafter, of any action
40 taken in response to recommendations made by the
41 institution. Immediately upon receipt of notification of any
42 changes in the personnel classification system by the board,

43 the institution shall post copies of such notice in prominent
44 campus locations. Changes in classification or changes in
45 job title, as approved by the board, shall be effective no later
46 than the first day of July of each year. When such changes
47 affect currently employed personnel, each classified
48 employee so affected shall be notified in writing regarding
49 such change and the effect thereof.

§18-26B-7. Conferences regarding personnel classification.

1 (a) The president of the institution or the designees
2 charged with responsibility to develop any personnel
3 recommendations for inclusion in the institution's annual
4 report to the board shall meet and confer during
5 development of the recommendations with the classified
6 employees who (1) may be affected by proposed
7 recommendations to the board; or (2) have requested a
8 change in job title.

9 (b) In accordance with the provisions of article twenty-
10 nine of this chapter relating to employee grievance
11 procedures, a classified employee may appeal the initial
12 assignment, any change in the assigned classification or job
13 title, or any change in the system of classification, whether
14 such change is the result of action taken by the board upon
15 its own authority or upon the recommendations of the
16 institutions.

§18-26B-8. Hirings after effective date.

1 Any individual hired as a full-time classified employee
2 after the effective date of this section shall be assigned by
3 the board, with consideration to any recommendations of
4 the institution, to a placement on the salary schedule which
5 is appropriate to such individual's classification, job title,
6 pay grade and years of experience: *Provided*, That nothing
7 in this section shall be construed to guarantee to a newly
8 hired classified employee payment of the salary prescribed
9 in section three of this article.

**§18-26B-9. Additional employment by mutual agreement;
provision for board approval.**

1 In accordance with policy established by the board and
2 by mutual agreement, the president of an institution, or a
3 designated representative, and a classified employee at
4 such institution may agree on duties to be performed by

5 such employee in addition to those duties listed in the job
6 description. The terms and conditions of any such
7 agreement shall be in writing, signed by both parties, and
8 shall describe the additional duties to be performed, the
9 length of time such agreement shall be in force and the
10 additional compensation to be paid. Such agreement shall
11 be submitted to the board and shall be in effect unless and
12 until the institution receives notice of nonapproval within
13 ten working days following the submission thereof.

CHAPTER 69

(Com. Sub. for S. B. 256—By Senators Cook and Lucht)

[Passed March 5, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting minors to vote only at a primary election held to nominate candidates when the minors will be eighteen by the general election.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-3. Persons entitled to vote.

1 Citizens of the state shall be entitled to vote at all elec-
2 tions held within the precincts of the counties and municipi-
3 palities in which they respectively reside. But no person
4 who has not been registered as a voter as required by law,
5 or who is a minor, or of unsound mind, or who is under
6 conviction of treason, felony or bribery in an election, or
7 who is not a bona fide resident of the state, county or
8 municipality in which he offers to vote, shall be permitted
9 to vote at such election while such disability continues.
10 Subject to the qualifications otherwise prescribed in this

- 11 section, however, a minor shall be permitted to vote only
12 in a primary election if he will have reached the age of
13 eighteen years on the date of the general election next to
14 be held after such primary election.

CHAPTER 70

(Com. Sub. for H. B. 1198—By Delegate Hamilton and Delegate Mastrantoni)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend sections eleven and twenty-two, article two of said chapter; and to amend and reenact section eleven, article three of said chapter, all relating to requiring municipalities to provide maps of their boundaries to clerks of county commissions; requiring appointments as registrars to be persons from both major political parties; requiring clerks of county commissions to give registrars written instructions for performing their duties; requiring registrars when making house-to-house canvasses and clerks of county commissions or their deputies when registering voters, (1) to require registrants to prove their identities and ages, (2) attempt to establish whether the registrants reside within a municipality, and (3) have registrants residing within municipalities complete a municipal registration form if that municipality has a separate registration file for it; requiring clerks to have registrants signing municipal registration forms to do so under oath or affirmation; requiring temporary registration offices to be open for three days between thirty and sixty days prior to elections; requiring the clerks to cancel registration of voters for whom an obituary is published in a newspaper or for whom a death certificate is received from a state or local registrant of vital statistics; preparation, number and handling of absent voters' ballots; and time in which to estimate and determine the number of absent voters' ballots required.

Be it enacted by the Legislature of West Virginia:

That section five, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections eleven and twenty-two, article two of said chapter be amended and reenacted; and that section eleven, article three of said chapter be amended and reenacted to read as follows:

Article

1. **General Provisions and Definitions.**
2. **Registration of Voters.**
3. **Voting by Absentees.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

1 The precinct shall be the basic territorial election
 2 unit. The county commission shall divide each magiste-
 3 rial district of the county into election precincts, shall
 4 number the precincts, shall determine and establish the
 5 boundaries thereof, and shall designate one voting place
 6 in each precinct, which place shall be established as
 7 nearly as possible at the point most convenient for the
 8 voters of the precinct. Each magisterial district shall
 9 contain at least one voting precinct and each precinct
 10 shall have but one voting place therein.

11 Each precinct within any urban center shall contain
 12 not less than three hundred nor more than eight
 13 hundred registered voters. Each precinct in a rural or
 14 less thickly settled area shall contain not less than two
 15 hundred nor more than seven hundred registered voters,
 16 unless upon a written finding by the county commission
 17 that establishment of or retention of a precinct of less
 18 than two hundred voters would prevent undue hardship
 19 to the voters, the secretary of state determines that such
 20 precinct be exempt from the two hundred voter min-
 21 imum limit. If, at any time the number of registered
 22 voters exceeds the maximum number specified, the
 23 county commission shall rearrange the precincts within

24 the political division so that the new precincts each
25 contain a number of registered voters within the
26 designated limits. If a county commission fails to
27 rearrange the precincts as required, any qualified voter
28 of the county may apply for a writ of mandamus to
29 compel the performance of this duty.

30 In order to facilitate the conduct of local and special
31 elections and the use of election registration records
32 therein, precinct boundaries shall be established to
33 coincide with the boundaries of any municipality of the
34 county and with the wards or other geographical
35 districts of the municipality except in instances where
36 found by the county commission to be wholly imprac-
37 ticable so to do. Governing bodies of all municipalities
38 shall provide accurate and current maps of their
39 boundaries to the clerk of any county commission of a
40 county in which any portion of the municipality is
41 located.

42 The provisions of this section are subject to the
43 provisions of section twenty-eight, article four of this
44 chapter relating to the number of voters in precincts in
45 which voting machines are used.

46 The county commission shall keep available at all
47 times during business hours in the courthouse at a place
48 convenient for public inspection a map or maps of the
49 county and municipalities with the current boundaries
50 of all precincts.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Appointment of registrars; qualifications and duties.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.

§3-2-11. Appointment of registrars; qualifications and duties.

1 The county commission of each county may, not less
2 than eighteen nor more than twenty weeks prior to the
3 date of a statewide primary election, appoint registrars
4 to make a biennial checkup allowed by this article. Two
5 persons of opposite political parties shall together serve
6 as registrars for from one to ten precincts.

7 No person is eligible to be appointed a registrar, or
8 in any way act as such, if he or she has been convicted
9 of a felony; or if he or she holds, or is a candidate for,
10 any elective or appointive office; or is a public employee,
11 under the laws of this state or of the United States; or
12 cannot read or write the English language. If any
13 registrar fails or refuses to serve or is properly
14 dismissed, the vacancy shall be filled either by the
15 county commission or by the clerk thereof in vacation,
16 in the manner provided for the appointment of regis-
17 trars. Each registrar, before entering upon the dis-
18 charge of his or her duties, shall take an oath that he
19 or she will perform the duties of the office to the best
20 of his or her ability, which oath shall be filed in the
21 office of the clerk of the county commission.

22 An equal number of such registrars shall be selected
23 from the two major political parties. The county
24 commission shall, at least four weeks prior to making
25 such appointment, request the county executive commit-
26 tee of each of the two political parties to submit a list
27 of names, equal to one half of the total number to be
28 appointed, of persons qualified to act as registrars; and
29 the county commission shall, if such lists are submitted,
30 appoint the qualified persons recommended and shall
31 notify each registrar of his or her appointment. Every
32 list so presented shall be filed and preserved for one
33 year by the clerk of the county commission. Any and
34 every act performed by any registrar under the
35 provisions of this article is void unless performed in
36 conjunction with a registrar of the opposite political
37 party at the same time and place.

38 Before acting, all such registrars shall attend a
39 session, or sessions, of instruction by the clerk of the
40 county commission, or some person designated by him
41 or her, concerning the performance of their duties.

42 Immediately following such instruction the clerk of
43 the county commission shall give to the registrars a copy
44 of the laws and regulations relating to registration of
45 voters, written instructions for performing their duties,
46 and all necessary forms and other supplies, including
47 maps with municipal precincts superimposed over

48 county precincts in cases where boundaries differ, and
49 a certified list of all registered voters within the
50 precinct or precincts for which such registrars were
51 appointed, upon such form as may be prescribed by the
52 secretary of state. Such registrars shall proceed together
53 to make a house-to-house canvass in their precincts for
54 the purpose of making the biennial checkup allowed by
55 section twenty-one of this article. Each biennial checkup
56 shall be completed at least sixty days before the
57 statewide primary election following the appointment of
58 the registrars. In making the checkup the registrars
59 shall not reregister any person who is already registered
60 in such precinct, but shall determine whether or not
61 such person is duly registered and qualified to vote
62 therein.

63 The registrars shall require valid identification and
64 proof of age of each registrant, and shall inquire and
65 attempt to establish whether the registrant resides
66 within a municipality. The registrars shall have the
67 registrant complete the voter registration form for
68 county-state permanent registration and if the person
69 resides within the limits of a municipality for which a
70 separate registration file is kept, the registrars shall
71 also have the registrant complete the form for municipal
72 registration.

**§3-2-22. Registration in clerk's office; cancellation of
registrations of deceased persons; temporary
registration offices.**

1 The clerk or any deputy clerk of the county commis-
2 sion may register any qualified person as a voter. The
3 clerk or deputy shall first require valid identification
4 and proof of age, and inquire and attempt to establish
5 whether the voter resides within the limits of a
6 municipality using the map provided by the municipal-
7 ity in accordance with section five, article one of this
8 chapter. The clerk or deputy clerk shall have the person
9 registering fill in and complete the prescribed voter
10 registration form for county-state permanent registra-
11 tion. If the person resides within the limits of a
12 municipality for which a separate registration file is
13 kept, the clerk or deputy shall also have the person

14 complete the form for municipal registration. The
15 registrant shall sign the form or forms under oath or
16 affirmation. The clerk, upon proper proof, may alter,
17 amend, correct or cancel the registration record of any
18 voter. Such registration or alteration, amendment,
19 correction or cancellation of registration records shall be
20 carried on throughout the year.

21 During the biennial checkup period of every even-
22 numbered year, the clerk or deputy clerk shall visit
23 every public or private institution, excluding hospitals,
24 in which reside aged, infirm, disabled or chronically ill
25 persons and every high school to register qualified
26 voters. The clerk shall establish at least one temporary
27 registration office per magisterial or tax district,
28 whichever is more numerous, to register qualified
29 persons or to alter, amend, correct or cancel such
30 registration records. Temporary registration offices
31 shall be open at least three days, including one Saturday
32 and one evening, not more than sixty days nor less than
33 thirty days prior to each primary and each general
34 election. The hours shall be posted and advertised as a
35 Class III-O legal advertisement with the publication
36 area being the magisterial district. The clerk of the
37 county commission shall also solicit public service
38 advertising of such registration offices and times on
39 radio, television and newspapers serving that county.

40 Within fifteen days following receipt of a death
41 certificate from the state or local registrar of vital
42 statistics or the publication in a newspaper of the county
43 an obituary clearly identifying a deceased person by
44 name, residence and age, the clerk of the county
45 commission shall cancel the voter registration, if any, of
46 the person shown to be deceased by such certificate or
47 obituary.

48 Sixty days prior to a general election, the clerk of the
49 county commission shall review each death certificate
50 received by him and shall cancel the voter registration,
51 if any, of each deceased person whose voter registration
52 has not previously been canceled. By the forty-fifth day
53 prior to a general election each clerk of a county
54 commission shall certify to the secretary of state that he

55 has performed the duty required by this paragraph.

56 If found necessary, the county commission may order
57 and direct the clerk of the county commission to
58 maintain additional office hours in the evening or at
59 other proper times and places for accommodation of
60 voter registration.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-11. Preparation, number and handling of absent voters' ballots.

1 Absent voters' ballots shall be in all respects like other
2 ballots. Not less than seventy days prior to the date on
3 which any primary, general or special election is to be
4 held, unless a lesser number of days is provided for in
5 any specific election law in which case such lesser
6 number of days shall apply, the clerks of the circuit
7 courts of the several counties shall estimate and
8 determine the number of absent voters' ballots of all
9 kinds which will be required in their respective counties
10 for any such election. The ballots for the election of all
11 officers, or the ratification, acceptance or rejection of
12 any measure, proposition or other public question to be
13 voted on by the voters, shall be prepared and printed
14 under the direction of the board of ballot commissioners
15 constituted as provided in article one of this chapter.
16 The several county boards of ballot commissioners shall
17 prepare and have printed, in such number as they shall
18 determine, such absent voters' ballots as are to be
19 printed under their directions as hereinbefore provided,
20 and such ballots shall be delivered to the clerk of the
21 circuit court of the county not less than forty-two days
22 prior to the day of the election at which they are to be
23 used. Before any ballot is mailed or delivered, the clerk
24 of the circuit court shall affix his official seal and he
25 and the other members of the board of ballot commis-
26 sioners shall place their signatures near the lower left-
27 hand corner on the back thereof. An absent voter's ballot
28 not containing such seal and signatures shall be invalid
29 and shall be subject to challenge by any election
30 commissioner or poll clerk.

31 The clerk of the circuit court shall be primarily

32 responsible for the preparation, mailing, receiving,
 33 delivering and otherwise handling of all absent voters'
 34 ballots. He shall keep such record, as may be prescribed
 35 by the secretary of state, of all ballots so delivered for
 36 the purpose of absentee voting, as well as all ballots, if
 37 any, marked before him, and shall deliver to the
 38 commissioner of election to whom the ballots for the
 39 precinct are delivered and at the time of the delivery
 40 of such ballots a certificate stating the number of ballots
 41 delivered or mailed to absent voters, and those marked
 42 before him, if any, and the names of the voters to whom
 43 such ballots have been delivered or mailed, or by whom
 44 they have been marked, if marked before him.

CHAPTER 71

(Com. Sub. for H. B. 1358—By Delegate Mastrantoni and Delegate R. Harman)

[Passed February 26, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring notice to be given of the location of relocated polling places.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§3-1-7. Precinct changes; procedure; precinct record.

1 Subject to the provisions and limitations of section five
 2 of this article, the county commission of any county may
 3 change the boundaries of any precinct within such
 4 county, or divide any precinct into two or more
 5 precincts, or consolidate two or more precincts into one,
 6 or change the location of any polling place whenever the
 7 public convenience may require it.

8 No order effecting such change, division, or consoli-
9 dation shall be made by the county commission within
10 ninety days next preceding an election nor without
11 giving notice thereof at least one month before such
12 change, division or consolidation, by publication of such
13 notice as a Class II-0 legal advertisement in compliance
14 with the provisions of article three, chapter fifty-nine of
15 this code, and the publication area for such publication
16 shall be the county in which such precinct or precincts
17 are located. The county commission shall also, within
18 fifteen days after the date of the order, cause a copy to
19 be published as aforesaid.

20 The county commission shall also, before the next
21 succeeding election, cause the voters in the several
22 precincts affected by the order to be duly registered in
23 the proper precinct or precincts.

24 The county commission shall keep in a well-bound
25 book, marked "election precinct record," a complete
26 record of all their proceedings hereunder and of every
27 order made creating a precinct or precincts or establish-
28 ing a place of voting therein. Such "election precinct
29 record" shall be kept by the county commission clerk in
30 his office, and shall, at all reasonable hours, when not
31 actually in use by the county commission, be open to
32 inspection by any citizen of the county.

33 When the county commission establishes a polling
34 place at a location other than the location used for
35 holding the preceding primary, general or special
36 election in that precinct, the commission shall cause a
37 notice to be posted on election day on the door of the
38 previous polling place describing the location of the
39 newly established polling place.

40 If for any reason the election cannot be held at the
41 designated polling place in a precinct, and no provision
42 has been made by the county commission for holding the
43 election at another place, the commissioners of election
44 for that precinct may hold the election at the nearest
45 place which they can secure for the purpose. They shall
46 make known by proclamation to voters present at the
47 time for opening the polls, and by posting a notice at

48 or near the entrance of the first named polling place,
49 the location at which the election will be held. The
50 county commission shall establish another place of
51 voting for that precinct as soon thereafter as practica-
52 ble.

53 Notwithstanding any provision herein to the contrary,
54 in the case of an emergency, the county commission may
55 make such precinct change no later than sixty days
56 prior to an election in accordance with the requirements
57 herein with the approval of the secretary of state. Such
58 change, if made however, shall not cause any voter to
59 be moved to a different district.

CHAPTER 72

(H. B. 1199—By Delegate Hamilton and Delegate Casey)

[Passed February 13, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring provision of cards of general information and cards of instruction as prescribed by the secretary of state; and requiring an instruction card to be posted in each voting booth and informational cards to be posted at the voting places where voters wait to vote.

Be it enacted by the Legislature of West Virginia:

That section twenty, 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.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

1 The board of ballot commissioners of each county shall
2 provide cards of general information and cards of
3 instruction for voters in preparing their ballots, as
4 prescribed by the secretary of state. They shall furnish

5 a sufficient number of cards to the commissioners of
6 election at the same time they deliver the ballots for the
7 precinct.

8 The commissioners of election shall post one instruc-
9 tion card in each voting booth giving instructions to the
10 voters on how to prepare the ballots for deposit in the
11 ballot boxes and how to obtain a new ballot in place of
12 one accidentally spoiled.

13 The commissioners of election shall post one or more
14 other cards of general information at places inside and
15 outside of the voting place where voters pass or wait to
16 vote.

17 The ballot commissioners shall also cause to be
18 printed, on a different color paper than the official
19 ballot, ten or more copies of the ballots provided for each
20 voting place, at each election therein, which shall be
21 designated sample ballots, and shall be furnished and
22 posted with the cards of general information at each
23 voting place.

CHAPTER 73

(H. B. 1341—By Delegate Hamilton and Delegate Moore)

[Passed March 7, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six and nine, article nine of said chapter, all relating to elections generally; restrictions upon the persons present and their conduct at polls; removing the restrictions upon the number of persons allowed in the election room; permitting only certain persons to enter the polling places; prohibiting electioneering within three hundred feet of the polling place; and providing penalties for violations.

Be it enacted by the Legislature of West Virginia:

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

Article

1. General Provisions and Definitions.
9. Offenses and Penalties.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-37. Restrictions on presence and conduct at polls.

1 No person, except the election officers and voters
2 while going to the election room to vote and returning
3 therefrom, may be or remain within three hundred feet
4 of the outside entrance to the building housing the
5 polling place while the polls are open; but this section
6 does not apply to persons living or carrying on business
7 within that distance of the election room, while in the
8 discharge of their legitimate business, or to persons
9 whose business requires them to pass and repass within
10 three hundred feet of such entrance.

11 A person who is delivering a voter to a polling place
12 by motor vehicle may drive such vehicle to a convenient
13 and accessible location to discharge the voter, notwith-
14 standing that the location is within three hundred feet
15 of the outside entrance to the building housing the
16 polling place. Upon discharging such voter from the
17 vehicle, the person shall remove the vehicle from within
18 three hundred feet of the entrance until such time as the
19 voter is to be transported from the polling place or
20 another voter delivered: *Provided*, That vehicles deliv-
21 ering voters who require assistance by reason of
22 blindness, disability or advanced age may remain within
23 three hundred feet of the entrance until such time as the
24 voter is to be transported from the polling place.

25 The election commissioners shall limit the number of
26 voters in the election room so as to preserve order. No
27 person may approach nearer than five feet to any booth
28 or compartment while the election is being held, except
29 the voters to prepare their ballots, or the poll clerks
30 when called on by a voter to assist in the preparation

31 of his ballot, and no person, other than election officers
32 and voters engaged in receiving, preparing and depos-
33 iting their ballots, may be permitted to be within five
34 feet of any ballot box, except by authority of the board
35 of election commissioners, and then only for the purpose
36 of keeping order and enforcing the law.

37 Not more than one person may be permitted to occupy
38 any booth or compartment at one time. No person may
39 remain in or occupy a booth or compartment longer than
40 may be necessary to prepare his ballot, and in no event
41 longer than five minutes, except that any person who
42 claims a disability pursuant to section thirty-four of this
43 article shall have additional time up to ten additional
44 minutes to prepare his ballot. No voter, or person
45 offering to vote, may hold any conversation or commun-
46 ication with any person other than the poll clerks or
47 commissioners of election, while in the election room.

48 The provisions of this section do not apply to persons
49 rendering assistance to blind voters as provided in
50 section thirty-four of this article.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-6. Unauthorized presence in election room; three hundred-foot limit;
penalties.

§3-9-9. Other unlawful acts at polling places; penalties.

§3-9-6. Unauthorized presence in election room; three hundred-foot limit; penalties.

1 If any person, not herein authorized so to do, enters
2 or attempts to enter the election room, except upon a
3 lawful errand and for a proper purpose, or remains
4 within three hundred feet of the outside entrance to the
5 building housing the polling place, contrary to the
6 provisions of this chapter, he shall be guilty of a
7 misdemeanor, and, on conviction thereof, shall be fined
8 not less than fifty dollars nor more than five hundred
9 dollars, or confined in the county jail for not more than
10 thirty days.

11 Excepting those individuals provided for expressly in
12 this or other sections of the code, only full-time
13 employees of the secretary of state's office or full-time

14 employees of the respective county offices of the county
15 clerk or the county prosecutor may enter or otherwise
16 disturb the polling place.

§3-9-9. Other unlawful acts at polling places; penalties.

1 No officer of election may disclose to any person the
2 name of any candidate for whom a voter has voted. No
3 officer of election may do any electioneering on election
4 day. No person may do any electioneering on election
5 day within any polling place, or within three hundred
6 feet of the outside entrance to the building housing the
7 polling place. No person may apply for or receive any
8 ballot in any polling place, other than that in which he
9 is entitled to vote, nor may any person examine a ballot
10 which any voter has prepared for voting, or solicit the
11 voter to show the same, nor ask, nor make any arrange-
12 ment, directly or indirectly, with any voter, to vote an
13 open ballot. No person, except a commissioner of
14 election, may receive from any voter a ballot prepared
15 by him for voting. No voter may receive a ballot from
16 any person other than one of the poll clerks; nor may
17 any person other than a poll clerk deliver a ballot to a
18 commissioner of election to be voted by such commis-
19 sioner. No voter may deliver any ballot to a commis-
20 sioner of election to be voted, except the one he receives
21 from the poll clerk. No voter may place any mark upon
22 his ballot, or suffer or permit any other person to do so,
23 by which it may be afterward identified as the ballot
24 voted by him. Whoever violates any provision of this
25 section shall be guilty of a misdemeanor, and, on
26 conviction thereof, shall be fined not less than one
27 hundred dollars nor more than one thousand dollars, or
28 confined in jail for not more than one year, or both fined
29 and confined.

CHAPTER 74

(Com. Sub. for H. B. 1196—By Delegate Hamilton and Delegate Smirl)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two,

chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment of a permanent registration system; providing for the correction of errors and omissions on the voter registration records following each election; requiring the cancellation of the registration of persons failing to vote during a period covering any two statewide primary and two general elections; providing for the reinstatement of voters whose registration has been canceled for failure to vote; allowing reinstatement to be by affidavit; requiring notice of reinstatement requirements.

Be it enacted by the Legislature of West Virginia:

That section three, article two, 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 2. REGISTRATION OF VOTERS.

§3-2-3. Registration, cancellation and reinstatement.

1 A permanent registration system shall hereby be
2 established which shall be uniform throughout the state
3 and all of its subdivisions. No voter so registered shall
4 be required to register again for any election while he
5 continues to reside at the same address, or, having
6 moved from such address, is properly transferred
7 according to the provisions of section twenty-seven or
8 forty-one of this article, unless his registration is
9 canceled as provided in this article.

10 Within one hundred and twenty days following any
11 election, the clerk of the county commission shall, as
12 evidenced by the presence or absence of signatures on
13 the pollbooks for such election, correct any errors or
14 omissions on the voter registration records pertaining to
15 the election resulting from the poll clerks erroneously
16 checking or failing to check the registration records as
17 required by the provisions of section thirty-four, article
18 one of this chapter.

19 At the same time that the checkup is made as
20 required by this section, the clerk shall cancel the
21 registration of each person who has failed to vote at least

22 once in any statewide, special or municipal election held
23 during a period covering two statewide primary and two
24 general elections as indicated by his or her registration
25 record. The clerk of the county commission shall notify
26 by mail each person whose registration is canceled for
27 failure to vote. The notice shall inform the voter that;

28 (a) In order to be reinstated he or she must:

29 (1) Register again, either in person at the county
30 clerk's office or by mail, according to the provisions of
31 section three or forty-one of this article; or

32 (2) Execute and file an affidavit of reinstatement of
33 registration at the same residence address not later than
34 thirty days before the next primary or general election,
35 except that reinstatement by affidavit shall not be
36 permitted if the voter registration in question was
37 canceled because the voter failed to make his first vote
38 in person as required by the provisions of subsection (e),
39 section forty-one of this article, and

40 (b) That the last day to register to vote in any election
41 is thirty days before that election.

42 A blank copy of the affidavit form shall be included
43 with the notice to the voter.

44 The clerk shall replace the registration card of any
45 voter who files a completed affidavit of reinstatement in
46 the registration records.

CHAPTER 75

(Com. Sub. for S. B. 255—By Senators Cook and Lucht)

[Passed March 5, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter three 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 primary elections and nominating procedures; permitting impecunious candidates to become nominated through a petition process instead of by a filing

fee; specifying procedures to be followed to qualify through a petition process; requiring the secretary of state to prescribe the forms and oath to be used.

Be it enacted by the Legislature of West Virginia:

That article five, 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 eight-a, to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.

1 A candidate seeking nomination to any office who is un-
2 able to pay the filing fee may qualify through the follow-
3 ing petition process in lieu of payment of the filing fee.

4 The candidate shall file an oath with the appropriate
5 office required under section eight of this article stating
6 that he is unable to pay the filing fee due to a lack of
7 financial resources. Such oath shall be filed not earlier
8 than the second Monday in January next preceding the
9 primary election day.

10 Upon receipt of the written oath the receiving officer
11 shall provide the candidate with in-lieu-of-filing-fee peti-
12 tion forms and instructions on gathering the required
13 signatures. The number of required signatures shall be
14 four qualified voters for each whole dollar of the filing
15 fee: *Provided*, That the filing fee shall be waived in whole
16 and not in part. Only signatures of voters registered in
17 the county, district or other political division represented
18 by the office sought may be solicited. Solicitors of signa-
19 tures shall also be residents of the county, district or other
20 geographical entity represented by the office sought: *Pro-*
21 *vided, however*, That for offices to be filled by the voters
22 of more than one county, separate petition forms shall be
23 used for the signatures of qualified voters from each
24 county.

25 No qualified voter forfeits his or her opportunity to vote

26 in the primary election by signing an in-lieu-of-filing-fee
27 petition.

28 The candidate may submit a greater number of signa-
29 tures to allow for subsequent losses due to invalidity of
30 some signatures. The county clerk may not be required to
31 determine the validity of a greater number of signatures
32 than that required by this section.

33 Signatures obtained on an in-lieu-of-filing-fee petition
34 shall not be counted toward the number of voters required
35 to sign a nomination certificate in accordance with section
36 twenty-three of this article.

37 The candidate shall file all in-lieu-of-filing-fee petitions
38 with the required number of valid signatures with the
39 county clerk or secretary of state, as the case may be,
40 not later than the last date required by law for filing
41 declarations of candidacies and payment of the filing
42 fee.

43 The oath and forms required by this section shall be
44 prescribed by the secretary of state.

CHAPTER 76

(S. B. 274—By Senator Tucker)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the first day of August before a general election as the deadline for presidential and vice presidential candidates to file nomination certificates; requiring that those soliciting or providing signatures for these certificates must reside within the political division represented by the office sought and must give oral notice that signing the certificate forfeits the right to vote in the corresponding primary election; removing the requirement that candidates must designate their party and its emblem; and requiring the secretary of state to prescribe the certificates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-23. Certificate nominations; requirements and control; penalties.

1 (a) Groups of citizens having no party organization may
 2 nominate candidates for public office otherwise than by
 3 conventions or primary elections. In such case, the
 4 candidate or candidates, jointly or severally, shall file a
 5 declaration with the secretary of state if the office is to be
 6 filled by the voters of more than one county, or with the
 7 clerk of the circuit court of the county if the office is to be
 8 filled by the voters of one county or political subdivision
 9 thereof; such declaration to be filed at least thirty days
 10 prior to the time of filing the certificate provided by section
 11 twenty-four of this article: *Provided*, That the deadline for
 12 filing the certificate for persons seeking ballot access as a
 13 candidate for the office of president or vice president shall
 14 be filed not later than the first day of August preceding the
 15 general election. At the time of filing of such declaration
 16 each candidate shall pay the filing fee required by law, and
 17 if such declaration is not so filed or the filing fee so paid, the
 18 certificate shall not be received by the secretary of state, or
 19 clerk of the circuit court, as the case may be.

20 (b) The person or persons soliciting or canvassing
 21 signatures of duly qualified voters on such certificate or
 22 certificates, may solicit or canvass duly registered voters
 23 residing within the county, district, or other political
 24 division represented by the office sought, but must first
 25 obtain from the clerk of the county commission credentials
 26 which must be exhibited to each voter canvassed or
 27 solicited, which credentials may be in the following form or
 28 effect:

29 State of West Virginia, County of , ss:
 30 This certifies that, a duly registered
 31 voter of this State; whose post-office address is ,
 32 is hereby authorized to solicit and canvass duly registered
 33 voters residing in (here place the county, district

34 or other political division represented by the office sought)
 35 to sign a certificate purporting to nominate
 36 (here place name of candidate heading list on certificate) for
 37 the office of and others, at the general election
 38 to be held on, 19.....

39 Given under my hand and the seal of my office this
 40 day of, 19.....

41
 42 Clerk, County Commission of County.

43 The clerk of each county commission, upon proper
 44 application made as herein provided, shall issue such
 45 credentials and shall keep a record thereof.

46 (c) The certificate shall be personally signed by duly
 47 registered voters, in their own proper handwriting or by
 48 their marks duly witnessed, who must be residents within
 49 the county, district or other political division represented
 50 by the office sought wherein such canvass or solicitation is
 51 made by the person or persons duly authorized. Such
 52 signatures need not all be on one certificate. The number of
 53 such signatures shall be equal to not less than one percent of
 54 the entire vote cast at the last preceding general election for
 55 the office in the state, district, county or other political
 56 division for which the nomination is to be made, but in no
 57 event shall the number be less than twenty-five. Where two
 58 or more nominations may be made for the same office, the
 59 total of the votes cast at the last preceding general election
 60 for the candidates receiving the highest number of votes on
 61 each ticket for such office shall constitute the entire vote.
 62 No signature on such certificate shall be counted unless it
 63 be that of a duly registered voter of the county, district or
 64 other political division represented by the office sought
 65 wherein such certificate was presented. It shall be the duty
 66 of those soliciting signatures to read to each voter whose
 67 signature is solicited the statement written on the
 68 certificate which gives notice that no person signing such
 69 certificate shall vote at any primary election to be held to
 70 nominate candidates for office to be voted for at the election
 71 to be held next after the date of signing such certificate.

72 (d) Such certificates shall state the name and residence
 73 of each of such candidates; that he is legally qualified to
 74 hold such office; that the subscribers are legally qualified
 75 and duly registered as voters and desire to vote for such

76 candidates; and may designate, by not more than five
77 words, a brief name of the party which such candidates
78 represent and may adopt a device or emblem to be printed
79 on the official ballot. All candidates nominated by the
80 signing of such certificates shall have their names placed on
81 the official ballot as candidates, as if otherwise nominated
82 under the provisions of this chapter.

83 The secretary of state shall prescribe the form and
84 content of the nomination certificates to be used for
85 soliciting signatures. The content shall include the
86 language to be used in giving written and oral notice to each
87 voter that signing of the nominating certificate forfeits that
88 voter's right to vote in the corresponding primary election.

89 Offices to be filled by the voters of more than one county
90 shall use separate petition forms for the signatures of
91 qualified voters for each county.

92 (e) The secretary of state, or the clerk of the circuit
93 court, as the case may be, may investigate the validity of
94 such certificates and the signatures thereon, and if upon
95 such investigation there may be doubt as to the legitimacy
96 and the validity of such certificate, he may request the
97 attorney general of the state, or the prosecuting attorney of
98 the county, to institute a quo warranto proceeding against
99 the nominee or nominees by certificate to determine his or
100 their right to such nomination to public office, and upon
101 request being made, the attorney general or prosecuting
102 attorney shall institute such quo warranto proceeding.

103 (f) Any person violating the provisions hereof, in
104 addition to penalties prescribed elsewhere for violation of
105 this chapter, shall be guilty of a misdemeanor, and, upon
106 conviction, shall be fined not more than one thousand
107 dollars, or confined in the county jail for not more than one
108 year, or both, in the discretion of the court.

CHAPTER 77

(S. B. 324—By Senator Tomblin)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article fifteen,

chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to emergency ambulance services; competitive bids; exceptions; publication of solicitation for sealed bids.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.

§7-15-16. Competitive bids; publication of solicitation for sealed bids.

1 A purchase of or contract for all supplies, equipment
2 and materials and a contract for the construction of facili-
3 ties by any authority, when the expenditure required
4 exceeds the sum of two thousand five hundred dollars,
5 shall be based on competitive sealed bids. Such bids shall
6 be obtained by public notice published as a Class II legal
7 advertisement in compliance with the provisions of article
8 three, chapter fifty-nine of this code, and the publication
9 area for such publication shall be the service area of the
10 authority. The second publication shall be made at least
11 fourteen days before the final date for submitting bids.
12 In addition to such publication, the notice may also be
13 published by any other advertising medium the author-
14 ity may consider advisable, and the authority may also
15 solicit sealed bids by sending requests by mail to prospec-
16 tive suppliers and by posting notice on a bulletin board
17 in the office of the authority.

CHAPTER 78

(Com. Sub. for H. B. 1907—By Delegate Otte and Delegate Love)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section three-cc; to amend and reenact sections two, three and four, article six, chapter twenty-four of said code; and to further amend said article by adding thereto five new sections, designated sections five, six, seven, eight and nine, all relating to the establishment of enhanced emergency telephone systems by county commissions; authorizing fee upon consumers of telephone service for enhanced emergency telephone systems; definitions; emergency telephone systems; requirements of enhanced emergency telephone systems and proposals; providing for resolution of conflicts; limitation of liability; and prohibitions and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 7. County Commissions Generally.**
- 24. Public Service Commission.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3cc. Authority of county commissions to establish enhanced emergency telephone systems; fee upon consumers of telephone service for such systems; authority to contract with telephone companies for billing of such fee.

- 1 (a) In addition to possessing the authority to establish
- 2 an emergency telephone system pursuant to section four,
- 3 article six, chapter twenty-four, a county commission or
- 4 the county commissions of two or more counties may,
- 5 instead, establish an enhanced emergency telephone

6 system or convert an existing system to an enhanced
 7 emergency system. The establishment of such a system
 8 shall be subject to the provisions of article six, chapter
 9 twenty-four of this code.

10 (b) A county commission may impose a fee upon
 11 consumers of local exchange service within that county
 12 for an enhanced emergency telephone system. Such fee
 13 shall be utilized solely for the capital, installation and
 14 maintenance costs of the enhanced emergency telephone
 15 system. The county shall reduce such fee when the
 16 capital and installation costs have been fully recovered
 17 to the level necessary to offset recurring maintenance
 18 and dispatcher costs only. No such fee may be used for
 19 the costs associated with establishing, equipping,
 20 furnishing, operating or maintaining a county answer-
 21 ing point.

22 (c) A county commission may contract with the
 23 telephone company or companies providing local ex-
 24 change service within the county for such telephone
 25 company or companies to act as the billing agent or
 26 agents of the county commission for the billing of the
 27 fee imposed pursuant to subsection (b) of this section.
 28 The cost for such billing agent services may be included
 29 as a recurring maintenance cost of the enhanced
 30 emergency telephone system.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-2. Definitions.

§24-6-3. Adoption of emergency telephone system plan.

§24-6-4. Creation of emergency telephone systems.

§24-6-5. Enhanced emergency telephone system requirements.

§24-6-6. Enhanced emergency telephone system proposed requirement.

§24-6-7. Resolution of conflicts.

§24-6-8. Limitation of liability.

§24-6-9. Prohibitions and penalty.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly
 2 requires a different meaning:

3 (1) "County answering point" means a facility to which
 4 enhanced emergency telephone system calls for a county

5 are initially routed for response, and where county
6 personnel respond to specific requests for emergency
7 service by directly dispatching the appropriate
8 emergency service provider, relaying a message to the
9 appropriate provider or transferring the call to the
10 appropriate provider.

11 (2) "Emergency services organization" means the
12 organization established under article five, chapter
13 fifteen of this code.

14 (3) "Emergency service provider" means any emer-
15 gency services organization or public safety unit.

16 (4) "Emergency telephone system" means a telephone
17 system which through normal telephone service facili-
18 ties automatically connects a person dialing the primary
19 emergency telephone number to an established public
20 agency answering point, but does not include an
21 enhanced emergency telephone system.

22 (5) "Enhanced emergency telephone system" means a
23 telephone system which automatically connects the
24 person dialing the primary emergency number to the
25 county answering point and in which the telephone
26 network system automatically provides to personnel
27 receiving the call, immediately on answering the call,
28 information on the location and the telephone number
29 from which the call is being made, and upon direction
30 from the personnel receiving the call routes such call to
31 emergency service providers that serve the location
32 from which the call is made.

33 (6) "Public agency" means the state, and any munic-
34 ipality, county, public district or public authority which
35 provides or has authority to provide fire-fighting, police,
36 ambulance, medical, rescue or other emergency
37 services.

38 (7) "Public safety unit" means a functional division of
39 a public agency which provides fire-fighting, police,
40 medical, rescue or other emergency services.

41 (8) "Telephone company" means a public utility which
42 is engaged in the provision of telephone service.

§24-6-3. Adoption of emergency telephone system plan.

1 (a) The public service commission shall, by the first
2 day of January, one thousand nine hundred eighty,
3 develop and adopt a comprehensive plan establishing
4 the technical and operational standards to be followed
5 in establishing and maintaining emergency telephone
6 systems.

7 (b) In developing the comprehensive plan, the public
8 service commission shall consult with telephone compan-
9 ies, and with the various public agencies and public
10 safety units, including, but not limited to, emergency
11 services organizations.

12 (c) The public service commission shall annually
13 review with each operating telephone company their
14 construction and switching replacements projections.
15 During this review, the public service commission shall
16 ensure that all new switching facilities will
17 accommodate the emergency telephone system.

§24-6-4. Creation of emergency telephone systems.

1 (a) Upon the adoption by the public service commis-
2 sion of the comprehensive plan, the public agency may
3 establish, consistent with the comprehensive plan, an
4 emergency telephone system within its respective
5 jurisdiction. Nothing herein contained, however, shall be
6 construed to prohibit or discourage in any way the
7 establishment of multijurisdiction or regional systems,
8 and any emergency telephone system established
9 pursuant to this article may include the territory of
10 more than one public agency, or may include only a
11 portion of the territory of a public agency. To the extent
12 feasible, emergency telephone systems shall be
13 centralized.

14 (b) Every emergency telephone system shall provide
15 access to emergency services organizations, police, fire-
16 fighting, and emergency medical and ambulance
17 services and may provide access to other emergency
18 services. Such system may also provide access to private
19 ambulance services. The emergency telephone system
20 shall provide the necessary mechanical equipment at the

21 established public agency answering point to allow deaf
22 persons access to the system. In those areas in which a
23 public safety unit of the state provides emergency
24 services, the system shall provide access to the public
25 safety unit.

26 (c) The primary emergency telephone number to the
27 extent possible, shall be uniform throughout the state.

28 (d) A telephone company in the normal course of
29 replacing or making major modifications to its switch-
30 ing equipment shall include the capability of providing
31 for the emergency telephone system and shall bear all
32 costs related thereto. All charges for other services and
33 facilities provided by the telephone company, including
34 the provision of distribution facilities and station
35 equipment, shall be paid for by the public agency or
36 public safety unit in accordance with the applicable
37 tariff rates then in effect for such services and facilities.
38 Other costs pursuant to the emergency telephone system
39 shall be allocated as determined by the public service
40 commission.

41 (e) All coin-operated telephones within the state shall,
42 by the first day of January, one thousand nine hundred
43 eighty-seven, be of a design that will permit a caller to
44 initiate, without first having to insert a coin (dial tone
45 first or post pay systems), local calls to the long distance
46 and directory assistance operators, calls to the
47 emergency telephone number answering point, if one
48 has been established in his or her local calling area, and
49 to other numbers for services as the telephone company
50 may from time to time make available to the public.

§24-6-5. Enhanced emergency telephone system requirements.

1 (a) An enhanced emergency telephone system, at a
2 minimum, shall provide that:

3 (1) All the territory in the county, including every
4 municipal corporation in the county, which is served by
5 telephone company central office equipment that will
6 permit such a system to be established shall be included
7 in the system;

8 (2) Every emergency service provider that provides
9 emergency service within the territory of a county
10 participate in the system;

11 (3) Each county answering point be operated
12 constantly;

13 (4) Each emergency service provider participating in
14 the system maintain a telephone number in addition to
15 the one provided for in the system; and

16 (5) If the county answering point personnel reasonably
17 determine that a call is not an emergency the personnel
18 provide the caller with the number of the appropriate
19 emergency service provider.

20 (b) To the extent possible, enhanced emergency
21 telephone systems shall be centralized.

22 (c) In developing an enhanced emergency telephone
23 system, the county commission shall seek the advice of
24 both the telephone companies providing local exchange
25 service within the county and the local emergency
26 providers.

**§24-6-6. Enhanced emergency telephone system proposed
requirement.**

1 (a) If a county commission decides to adopt an
2 enhanced emergency services telephone system it shall
3 first prepare a proposal on the implementation of the
4 system and shall hold a public meeting on the proposal
5 to explain the system and receive comments from other
6 public officials and interested persons. At least thirty
7 but not more than sixty days before the meeting, the
8 county commission shall place an advertisement in a
9 newspaper of general circulation in the county notifying
10 the public of the date, purpose and location of the
11 meeting and the location at which a copy of the proposal
12 may be examined.

13 (b) The proposal and the final plan adopted by the
14 county commission shall specify:

15 (1) Which telephone companies serving customers in
16 the county will participate in the system;

17 (2) The location and number of county answering
18 points; how they will be connected to a telephone
19 company's telephone network; from what geographic
20 territory each will receive system calls; what areas will
21 be served by the answering point; and whether an
22 answering point will respond to calls by directly
23 dispatching an emergency service provider, by relaying
24 a message to the appropriate provider, or by transfer-
25 ring the call to the appropriate provider;

26 (3) A projection of the initial cost of establishing,
27 equipping and furnishing and of the annual cost of the
28 first five years of operating and maintaining each
29 county answering point;

30 (4) How the county will pay for its share of the
31 system's cost; and

32 (5) How each emergency service provider will respond
33 to a misdirected call.

34 (c) Within three months of the public meeting
35 required by this section the county commission may
36 modify the implementation proposal. Upon completion
37 and adoption of the plan by the commission, it shall send
38 a copy of the plan to the public service commission, who
39 shall file such plan and ensure that its provisions are
40 complied with.

41 (d) After a plan is adopted, all telephone companies
42 included in the plan are subject to the specific require-
43 ments of the plan and the applicable requirements of
44 this article.

45 (e) A final plan may be amended only after notice of
46 the proposed amendments is given, as provided in
47 subsection (a) of this section and a new public meeting
48 is held.

§24-6-7. Resolution of conflicts.

1 In the event that a conflict arises between county
2 commissions, between telephone companies or between
3 a telephone company or companies and a county
4 commission or commissions concerning an emergency
5 telephone system or systems or an enhanced emergency

6 telephone system or systems, the public service commis-
7 sion, upon application by such county commission or
8 telephone company, shall resolve such conflict. The
9 resolution of such conflict may include the modification
10 or suspension of any final plan adopted pursuant to
11 section six of this article or the ordering of the
12 centralization of emergency telephone systems and
13 enhanced emergency telephone systems.

§24-6-8. Limitation of liability.

1 A public agency participating in an emergency
2 telephone system or a county which has established an
3 enhanced emergency telephone system, and any officer,
4 agent or employee of such public agency or county is not
5 liable for damages in a civil action for injuries, death
6 or loss to persons or property arising from any act or
7 omission, except willful or wanton misconduct, in
8 connection with developing, adopting or approving any
9 final plan or any agreement made pursuant to this
10 article, or otherwise bringing into operation an emer-
11 gency telephone system or an enhanced emergency
12 telephone system pursuant to this article.

§24-6-9. Prohibitions and penalty.

1 (a) No person may knowingly use the telephone
2 number of an emergency telephone system or enhanced
3 emergency telephone system to report an emergency if
4 he or she knows that no such emergency exists.

5 (b) No person may disclose or use, for any purpose
6 other than for an emergency telephone system or
7 enhanced emergency telephone system, any information
8 contained in the data base used for either an emergency
9 telephone system or an enhanced emergency telephone
10 system established pursuant to this article.

11 (c) Any person who violates any provision of this
12 section is guilty of a misdemeanor, and, upon conviction
13 thereof, shall be fined not less than two hundred dollars
14 nor more than five thousand dollars, or imprisoned in
15 the county jail not more than one year, or both fined and
16 imprisoned.

CHAPTER 79

(S. B. 525—by Senators Fanning, et al)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and five, article five, chapter fifteen of said code; to amend and reenact section fifteen, article five, chapter eighteen of said code; to amend and reenact section seven-b, article fifteen, chapter thirty-one of said code; to amend and reenact section six, article eighteen of said chapter; and to amend and reenact sections one and three, article eighteen-b of said chapter, relating to omnibus flood recovery programs generally; linked deposit program to assist business recovery in federal declared disaster areas; legislative findings and loan eligibility; relating to emergency services and emergency powers of the governor in connection with disasters; specifying general power of governor to implement plans for emergency services, including formation of disaster recovery team and composition thereof; relating to minimum school term and authority to decrease due to declared federal disaster; relating to West Virginia economic development authority loans and assistance for disaster recovery; expanding investment powers and providing for additional authorized types of investment for the West Virginia housing development fund in aid of effectuating its corporate purposes and for disaster recovery; providing for mortgage and industrial development investment pool activities to include single-family residential unit mortgages and funds for replacement housing in federal declared disaster areas; and limitations.

Be it enacted by the Legislature of West Virginia:

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

said code be amended and reenacted; that section seven-b, article fifteen, chapter thirty-one of said code be amended and reenacted; that section six, article eighteen of said chapter be amended and reenacted; and that sections one and three, article eighteen-b of said chapter be amended and reenacted, all to read as follows:

Chapter

12. Public Moneys and Securities.

15. Public Safety.

18. Education.

31. Corporations.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-2. Legislative findings.

§12-1A-4. Applications for loan priority; loan package.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses
 2 throughout the state are experiencing economic stagnation
 3 or decline, that high interest rates have caused small
 4 businesses in this state to suffer disproportionately in
 5 profitability and competition and that such high interest
 6 rates have fostered a serious increase in unemployment. The
 7 linked deposit program provided for by this article is
 8 intended to provide a statewide availability of lower-cost
 9 funds for lending purposes that will materially contribute
 10 to the economic revitalization of this state. Accordingly, it
 11 is declared to be the public policy of the state through the
 12 linked deposit program to create an availability of lower-
 13 cost funds to inject needed capital into the business
 14 community, sustain or improve business profitability,
 15 protect the jobs of citizens of this state and assist businesses
 16 located in any county declared to be a federal disaster area
 17 by the Federal Emergency Management Agency.

§12-1A-4. Applications for loan priority; loan package.

1 (a) An eligible lending institution that desires to receive
 2 a linked deposit shall accept and review applications for
 3 loans from eligible small businesses. The lending institution
 4 shall apply all usual lending standards to determine the

5 creditworthiness of each eligible small business.

6 (b) An eligible small business shall certify on its loan
7 application that the reduced rate loan will be used
8 exclusively to create new jobs or preserve existing jobs and
9 employment opportunities. Whoever knowingly makes a
10 false statement concerning such application shall be
11 prohibited from entering into the linked deposit loan
12 program.

13 (c) In considering which eligible small businesses
14 should receive reduced rate loans, the eligible lending
15 institution shall give priority to the economic needs of the
16 area in which the business is located, including whether the
17 business is located in a county declared to be a federal
18 disaster area by the Federal Emergency Management
19 Agency, and the number of jobs to be created or preserved
20 by the receipt of such loan.

21 (d) The eligible financial institution shall forward to the
22 state treasurer a linked deposit loan package, in the form
23 and manner as prescribed by the state treasurer. The
24 package shall include such information as required by the
25 state treasurer, including the amount of the loan requested
26 and the number of jobs to be created or sustained by each
27 eligible small business. The institution shall certify that
28 each applicant is an eligible small business, and shall, for
29 each business, certify the present borrowing rate applicable
30 to each specific eligible business.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5. EMERGENCY SERVICES.

§15-5-1. Policy and purpose.

§15-5-5. General powers of the governor.

§15-5-1. Policy and purpose.

1 In view of the existing and increasing possibility of the
2 occurrence of disasters of unprecedented size and
3 destructiveness, resulting from enemy attack, sabotage or
4 other hostile action, or from fire, flood, earthquakes or
5 other natural or man-made causes and in order to ensure
6 that preparations of this state will be adequate to deal with
7 such disasters, and generally to provide for the common
8 defense and to protect the public peace, health and safety
9 and to preserve the lives and property of the people of the

10 state, it is hereby found and declared to be necessary: (1) To
11 create a state emergency services agency and to authorize
12 the creation of local and regional organizations for
13 emergency services in the political subdivisions of the state;
14 (2) to confer upon the governor, and upon the executive
15 heads of governing bodies of the political subdivisions of
16 the state the emergency powers provided herein; (3) to
17 provide for the rendering of mutual aid among the political
18 subdivisions of the state and with other states and to
19 cooperate with the federal government with respect to the
20 carrying out of emergency services functions; (4) and to
21 establish and implement a comprehensive emergency
22 service plan to deal with such disasters.

23 It is further declared to be the purpose of this article and
24 the policy of the state that all emergency services functions
25 of this state be coordinated to the maximum extent with the
26 comparable functions of the federal government including
27 its various departments and agencies, of other states and
28 localities and of private agencies of every type, so that the
29 most effective preparation and use may be made of the
30 nation's manpower, resources and facilities for dealing
31 with any disaster that may occur.

§15-5-5. General powers of the governor.

1 The governor shall have general direction and control of
2 the office of emergency services and shall be responsible for
3 the carrying out of the provisions of this article and, in the
4 event of disaster beyond local control, may assume direct
5 operational control over all or any part of the emergency
6 services functions within this state.

7 In performing his duties under this article, the governor is
8 authorized to cooperate with the federal government, other
9 states and private agencies in all matters pertaining to the
10 provisions of emergency services for this state and the
11 nation.

12 In performing his duties under this article to effect its
13 policy and purpose, the governor is further authorized and
14 empowered:

15 (1) To make, amend and rescind the necessary orders,
16 rules and regulations to carry out the provisions of this
17 article within the limits of the authority conferred upon him
18 herein, with due consideration of the plans of the federal
19 government.

20 (2) To prepare and implement a comprehensive plan
21 and program for the provision of emergency services in this
22 state, such plan and program to be integrated into and
23 coordinated with comparable plans of the federal
24 government and of other states to the fullest possible
25 extent, and to coordinate the preparation of such plans and
26 programs by the political subdivisions of this state, such
27 plans to be integrated into and coordinated with the state
28 plan and program to the fullest possible extent.

29 (3) In accordance with such state plan and program, to
30 procure supplies and equipment, to institute training and
31 public information programs, to take all other preparatory
32 steps including the partial or full mobilization of
33 emergency services organizations in advance of actual
34 disaster and to ensure the furnishing of adequately trained
35 and equipped emergency services personnel in time of need.

36 (4) To make such studies and surveys of industries,
37 resources and facilities in this state as may be necessary to
38 ascertain the capabilities of the state for providing
39 emergency services and to plan for the most efficient
40 emergency use thereof.

41 (5) On behalf of the state, to enter into mutual aid
42 arrangements with other states and to coordinate mutual
43 aid plans between political subdivisions of this state.

44 (6) To delegate the administrative authority vested in
45 him under this article, to provide for the delegation or
46 transfer or both of the authority vested in the director under
47 the provisions of this article, to any other person as the
48 governor in his discretion may direct, and to provide for the
49 subdelegation of any such authority.

50 (7) To appoint a disaster recovery team composed of
51 departmental heads, members of the executive, political
52 subdivision representatives, technicians, members of the
53 public and other representatives, the composition of which
54 team shall reflect the character and extent of the disaster
55 itself.

56 (8) To appoint, in cooperation with local authorities,
57 metropolitan area directors when practicable.

58 (9) To cooperate with the president and the heads of the
59 armed forces, the civil defense agency of the United States
60 and other appropriate federal officers and agencies and
61 with the officers and agencies of other states in matters

62 pertaining to the civil defense of the state and nation,
63 including the direction and control of (a) blackouts and
64 practice blackouts, air raid drills, mobilization of
65 emergency services and civil defense forces and other tests
66 and exercises; (b) warnings and signals for drills or attacks
67 and the mechanical devices to be used in connection
68 therewith; (c) the effective screening or extinguishing of all
69 lights and lighting devices and appliances; (d) shutting off
70 water mains, gas mains, electric power connections and the
71 suspension of all other utility services; (e) the conduct of
72 civilians and the movement and cessation of movement of
73 pedestrians and vehicular traffic during, prior and
74 subsequent to drills or attack; (f) public meetings or
75 gatherings; and (g) the evacuation and reception of the
76 civilian population.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

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

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

13 Within the employment term there shall be an
14 instructional term for pupils of not less than one hundred
15 eighty nor more than one hundred eighty-five instructional
16 days: *Provided*, That the minimum instructional term may
17 be decreased, by order of the state superintendent of
18 schools, in any West Virginia county declared to be a federal
19 disaster area by the Federal Emergency Management
20 Agency. Instructional and noninstructional activities may
21 be scheduled during the same employment day. The

22 instructional term shall commence no earlier than the first
23 day of September and shall terminate no later than the
24 eighth day of June.

25 Noninstructional days in the employment term may be
26 used for making up canceled instructional days, curriculum
27 development, preparation for opening and closing of the
28 instructional term, in-service and professional training of
29 teachers, teacher-pupil-parent conferences, professional
30 meetings and other related activities. In addition, each
31 board may designate and schedule for teachers and service
32 personnel a maximum of four days to be used by the
33 employee outside the school environment. However, no
34 more than seven noninstructional days, except holidays,
35 may be scheduled prior to the first day of January in a
36 school term.

37 Notwithstanding any other provisions of the law to the
38 contrary, if the board has canceled instructional days equal
39 to the difference between the total instructional days
40 scheduled and one hundred seventy-eight, each succeeding
41 instructional day canceled shall be rescheduled, utilizing
42 only the remaining noninstructional days, except holidays,
43 following such cancellation, which are available prior to
44 the second day before the end of the employment term
45 established by such county board.

46 Where the employment term overlaps a teacher's or
47 service personnel's participation in a summer institute or
48 institution of higher education for the purpose of
49 advancement or professional growth, the teacher or service
50 personnel may substitute, with the approval of the county
51 superintendent, such participation for not more than five of
52 the noninstructional days of the employment term.

53 The board may extend the instructional term beyond one
54 hundred eighty-five instructional days provided the
55 employment term is extended an equal number of days. If
56 the state revenues and regular levies, as provided by law,
57 are insufficient to enable the board of education to provide
58 for the school term, the board may at any general or special
59 election, if petitioned by at least five percent of the
60 qualified voters in the district, submit the question of
61 additional levies to the voters. If at the election sixty
62 percent of the qualified voters cast their ballots in favor of
63 the additional levy, the board shall fix the term and lay a

64 levy necessary to pay the cost of the additional term. The
 65 additional levy fixed by the election shall not continue
 66 longer than five years without submission to the voters. The
 67 additional rate shall not exceed by more than one hundred
 68 percent the maximum school rate prescribed by article
 69 eight, chapter eleven of the code, as amended.

70 The public schools shall be open for the full instructional
 71 term to all persons who have attained the entrance age as
 72 stated in section five, article two and section eighteen,
 73 article five, chapter eighteen of this code: *Provided*, That
 74 persons over the age of twenty-one may enter only those
 75 programs or classes authorized by the state board of
 76 education and deemed appropriate by the county board of
 77 education conducting any such program or class: *Provided*,
 78 *however*, That authorization for such programs or classes
 79 shall in no way serve to affect or eliminate programs or
 80 classes offered by county boards of education at the adult
 81 level for which fees are charged to support such programs or
 82 classes.

CHAPTER 31. CORPORATIONS.

Article

- 15. West Virginia Economic Development Authority.
- 18. West Virginia Housing Development Fund.
- 18B. Mortgage and Industrial Development Investment Pool.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

**§31-15-7b. Loans for construction of electrical power
generating facilities, natural gas transmission
lines, coal processing plants, other energy
projects; and export development, farm
development, job development, forest
development, disaster recovery development
projects.**

- 1 (a) At the request of the governor or the appropriate
- 2 state agency or authority, the authority may lend money to
- 3 such office, agency or authority for the acquisition,

NOTE: This section was also amended by S.B. 403, which passed subsequent
to this act.

4 construction, improvement or alteration of projects for
5 electrical power generating facilities, natural gas
6 transmission lines, coal processing plants and other energy
7 projects.

8 (b) At the request of the department of commerce or the
9 office of community and industrial development, the
10 authority may lend money to any person or entity for the
11 acquisition, construction, improvement or alteration of any
12 project relative to export development, farm development,
13 job development, forest development, disaster recovery
14 development including, but not limited to, the
15 establishment of new economic development programs for
16 any counties declared to be a federal disaster area by the
17 Federal Emergency Management Agency.

18 (c) At the request of the West Virginia automobile
19 assistance corporation, the authority may lend money to
20 any person or entity for the acquisition, construction,
21 improvement or alteration of any project relative thereto.

22 (d) At the request of the West Virginia industrial and
23 trade jobs development corporation, the authority may lend
24 money to any person or entity for acquisition, construction,
25 improvement or alteration of any project relative thereto.

26 (e) A loan shall not be made unless the authority is
27 reasonably satisfied that the project will produce revenues
28 sufficient, together with any other revenues pledged, to
29 meet the principal and interest on the loan, other costs,
30 expenses and charges in connection with the loan and other
31 charges or obligations of the project which may be prior or
32 equal to the loan, promptly as they become due; that the
33 project is otherwise soundly financed; that the loan
34 application requirements of section eight of this article
35 have been satisfied; that the project will be owned and
36 operated by the state of West Virginia. A loan made
37 pursuant to this subsection shall not exceed the project
38 costs as determined by the authority. A loan shall be
39 secured in the manner required by the authority, shall be
40 repaid in a period and bear interest at a rate as determined
41 by the authority, which interest rate may be decreased or
42 increased so that it shall in no event be less than the rate
43 paid by the authority on notes, renewal notes or bonds
44 issued to fund the loan, and shall have such terms and
45 conditions as are required by the authority, all which shall

46 be set forth in a loan agreement and related documents as
47 required by the authority.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has and
2 may exercise all powers necessary or appropriate to carry
3 out and effectuate its corporate purpose, including, but not
4 limited to, the following:

5 (1) To make or participate in the making of federally
6 insured construction loans to sponsors of land development
7 for residential or temporary housing for occupancy by
8 eligible persons and families or to sponsors of residential or
9 temporary housing for occupancy by eligible persons and
10 families. Such loans shall be made only upon determination
11 by the housing development fund that construction loans
12 are not otherwise available, wholly or in part, from private
13 lenders upon reasonably equivalent terms and conditions;

14 (2) To make temporary loans, with or without interest,
15 but with such security for repayment as the housing
16 development fund determines reasonably necessary and
17 practicable, from the operating loan fund, if created,
18 established, organized and operated in accordance with the
19 provisions of section nineteen of this article, to defray
20 development costs to sponsors of land development for
21 residential or temporary housing for occupancy by persons
22 and families of low and moderate income or residential or
23 temporary housing construction for occupancy by persons
24 and families of low and moderate income which is eligible
25 or potentially eligible for federally insured construction
26 loans, federally insured mortgages, federal mortgages, or
27 uninsured construction loans or uninsured mortgage loans;

28 (3) To make or participate in the making of long-term
29 federally insured mortgage loans to sponsors of residential
30 or temporary housing for occupancy by eligible persons and
31 families, or to eligible persons and families, who may
32 purchase or construct such residential or temporary
33 housing. Such loans shall be made only upon determination
34 by the housing development fund that long-term mortgage
35 loans are not otherwise available, wholly or in part, from
36 private lenders upon reasonably equivalent terms and
37 conditions;

38 (4) To establish new housing and housing development
39 projects for counties declared to be in a federal disaster area
40 by the Federal Emergency Management Agency;

41 (5) To accept appropriations, gifts, grants, bequests and
42 devises, and to utilize or dispose of the same to carry out its
43 corporate purpose;

44 (6) To make and execute contracts, releases,
45 compromises, compositions and other instruments
46 necessary or convenient for the exercise of its powers, or to
47 carry out its corporate purpose;

48 (7) To collect reasonable fees and charges in connection
49 with making and servicing its loans, notes, bonds,
50 obligations, commitments and other evidences of
51 indebtedness, and in connection with providing technical,
52 consultative and project assistance services. Such fees and
53 charges shall be limited to the amounts required to pay the
54 costs of the housing development fund, including operating
55 and administrative expenses, and reasonable allowances
56 for losses which may be incurred;

57 (8) To invest any funds not required for immediate
58 disbursement in any of the following securities:

59 (i) Direct obligations of or obligations guaranteed by
60 the United States of America or for the payment of the
61 principal and interest on which the full faith and credit of
62 the United States of America is pledged;

63 (ii) Bonds, debentures, notes or other evidences of
64 indebtedness issued by any of the following agencies: Banks
65 for cooperatives; federal intermediate credit banks; federal
66 home loan bank system; Export-Import Bank of the United
67 States; federal land banks; Tennessee Valley Authority;
68 United States Postal Service; Inter-American Development
69 Bank; International Bank for Reconstruction and
70 Development; Small Business Administration; Washington
71 Metropolitan Area Transit Authority; General Services
72 Administration; Federal Financing Bank; Federal Home
73 Loan Mortgage Corporation; Student Loan Marketing
74 Association; Farmer's Home Administration; the Federal
75 National Mortgage Association or the Government
76 National Mortgage Association; or any bond, debenture,
77 note, participation certificate or other similar obligation to
78 the extent such obligations are guaranteed by the
79 Government National Mortgage Association or Federal

80 National Mortgage Association or are issued by any other
81 federal agency and backed by the full faith and credit of the
82 United States of America;

83 (iii) Public housing bonds issued by public agencies or
84 municipalities and fully secured as to the payment of both
85 principal and interest by a pledge of annual contributions
86 under an annual contributions contract or contracts with
87 the United States of America; or temporary notes,
88 preliminary loan notes, or project notes issued by public
89 agencies or municipalities, in each case, fully secured as to
90 the payment of both principal and interest by a requisition
91 or payment agreement with the United States of America;

92 (iv) Certificates of deposit, time deposits, investment
93 agreements, repurchase agreements or similar banking
94 arrangements with a member bank or banks of the federal
95 reserve system or a bank the deposits of which are insured
96 by the Federal Deposit Insurance Corporation, or its
97 successor, or a savings and loan association or savings bank
98 the deposits of which are insured by the Federal Savings
99 and Loan Insurance Corporation, or its successor, or
100 government bond dealers reporting to, trading with and
101 recognized as primary dealers by a Federal Reserve Bank:
102 *Provided*, That such investments shall only be made to the
103 extent insured by the Federal Deposit Insurance
104 Corporation or the Federal Savings and Loan Insurance
105 Corporation or to the extent that the principal amount
106 thereof shall be fully collateralized by obligations which
107 are authorized investments for the housing development
108 fund pursuant to this section;

109 (v) Direct obligations of or obligations guaranteed by
110 the state of West Virginia;

111 (vi) Direct and general obligations of any other state,
112 municipality or other political subdivision within the
113 territorial United States: *Provided*, That at the time of their
114 purchase, such obligations are rated in either of the two
115 highest rating categories by a nationally recognized bond-
116 rating agency; and

117 (vii) Any bond, note, debenture or annuity issued by any
118 corporation organized and operating within the United
119 States: *Provided*, That such corporation shall have a
120 minimum net worth of fifteen million dollars and its
121 securities or its parent corporation's securities are listed on

122 one or more of the national stock exchanges: *Provided,*
123 *however,* That (1) such corporation has earned a profit in
124 eight of the preceding ten fiscal years as reflected in its
125 statements, and (2) such corporation has not defaulted in
126 the payment of principal or interest on any of its
127 outstanding funded indebtedness during its preceding ten
128 fiscal years, and (3) the bonds, notes or debentures of such
129 corporation to be purchased are rated "AA" or the
130 equivalent thereof or better than "AA" or the equivalent
131 thereof by at least two or more nationally recognized rating
132 services such as Standard and Poor's, Dun & Bradstreet,
133 Best's or Moody's;

134 (viii) If entered into solely for the purpose of reducing
135 investment, interest rate, liquidity or other market risks in
136 relation to obligations issued or to be issued or owned or to
137 be owned by the housing development fund, options,
138 futures contracts (including index futures but exclusive of
139 commodities futures, options or other contracts), standby
140 purchase agreements or similar hedging arrangements
141 listed by a nationally recognized securities exchange or a
142 corporation described in (vii) above;

143 (ix) Certificates, shares or other interests in mutual
144 funds, unit trusts or other entities registered under section
145 eight of the United States investment company act of 1940,
146 but only to the extent that the terms on which the
147 underlying investments are to be made prevent any more
148 than a minor portion of the pool which is being invested in
149 to consist of obligations other than investments permitted
150 pursuant to this section; and

151 (x) To the extent not inconsistent with the express
152 provisions of this section, obligations of the West Virginia
153 state board of investments or any other obligation
154 authorized as an investment for the West Virginia state
155 board of investments under article six, chapter twelve of
156 this code or for a public housing authority under article
157 fifteen, chapter sixteen of this code;

158 (9) To sue and be sued;

159 (10) To have a seal and alter the same at will;

160 (11) To make, and from time to time, amend and repeal
161 bylaws and rules and regulations not inconsistent with the
162 provisions of this article;

163 (12) To appoint such officers, employees and

- 164 consultants as it deems advisable and to fix their
165 compensation and prescribe their duties;
- 166 (13) To acquire, hold and dispose of real and personal
167 property for its corporate purposes;
- 168 (14) To enter into agreements or other transactions with
169 any federal or state agency, any person and any domestic or
170 foreign partnership, corporation, association or
171 organization;
- 172 (15) To acquire real property, or an interest therein, in
173 its own name, by purchase or foreclosure, where such
174 acquisition is necessary or appropriate to protect any loan
175 in which the housing development fund has an interest and
176 to sell, transfer and convey any such property to a buyer
177 and, in the event of such sale, transfer or conveyance cannot
178 be effected with reasonable promptness or at a reasonable
179 price, to lease such property to a tenant;
- 180 (16) To sell, at public or private sale, any mortgage or
181 other negotiable instrument or obligation securing a
182 construction, rehabilitation, improvement, land
183 development, mortgage or temporary loan;
- 184 (17) To procure insurance against any loss in connection
185 with its property in such amounts, and from such insurers,
186 as may be necessary or desirable;
- 187 (18) To consent, whenever it deems it necessary or
188 desirable in the fulfillment of its corporate purpose, to the
189 modification of the rate of interest, time of payment or any
190 installment of principal or interest, or any other terms, or
191 mortgage loan, mortgage loan commitment, construction
192 loan, rehabilitation loan, improvement loan, temporary
193 loan, contract or agreement of any kind to which the
194 housing development fund is a party;
- 195 (19) To make and publish rules and regulations
196 respecting its federally insured mortgage lending,
197 uninsured mortgage lending, construction lending,
198 rehabilitation lending, improvement lending and lending to
199 defray development costs and any such other rules and
200 regulations as are necessary to effectuate its corporate
201 purpose;
- 202 (20) To borrow money to carry out and effectuate its
203 corporate purpose and to issue its bonds or notes as
204 evidence of any such borrowing in such principal amounts
205 and upon such terms as shall be necessary to provide
206 sufficient funds for achieving its corporate purpose, except

207 that no notes shall be issued to mature more than ten years
208 from date of issuance and no bonds shall be issued to mature
209 more than fifty years from date of issuance;

210 (21) To issue renewal notes, to issue bonds to pay notes
211 and, whenever it deems refunding expedient, to refund any
212 bonds by the issuance of new bonds, whether the bonds to
213 be refunded have or have not matured except that no such
214 renewal notes shall be issued to mature more than ten years
215 from date of issuance of the notes renewed and no such
216 refunding bonds shall be issued to mature more than fifty
217 years from the date of issuance;

218 (22) To apply the proceeds from the sale of renewal
219 notes or refunding bonds to the purchase, redemption or
220 payment of the notes or bonds to be refunded;

221 (23) To provide technical services to assist in the
222 planning, processing, design, construction, or
223 rehabilitation or improvement of residential and temporary
224 housing for occupancy by eligible persons and families or
225 land development for residential and temporary housing
226 for occupancy by eligible persons and families;

227 (24) To provide consultative project assistance services
228 for residential and temporary housing for occupancy by
229 eligible persons and families and for land development for
230 residential and temporary housing for occupancy by
231 eligible persons and families and for the residents thereof
232 with respect to management, training and social services;

233 (25) To promote research and development in scientific
234 methods of constructing low cost residential and
235 temporary housing of high durability;

236 (26) With the proceeds from the issuance of notes or
237 bonds of the housing development fund, including, but not
238 limited to, mortgage finance bonds, or with other funds
239 available to the housing development fund for such
240 purpose, to participate in the making of or to make loans to
241 mortgagees approved by the housing development fund and
242 take such collateral security therefor as is approved by the
243 housing development fund and to invest in, purchase,
244 acquire, sell or participate in the sale of, or take
245 assignments of, notes and mortgages, evidencing loans for
246 the construction, rehabilitation, improvement, purchase or
247 refinancing of residential and temporary housing in this
248 state: *Provided*, That the housing development fund shall

249 obtain such written assurances as shall be satisfactory to it
250 that the proceeds of such loans, investments or purchases
251 will be used, as nearly as practicable, for the making of or
252 investment in long-term federally insured mortgage loans
253 or federally insured construction loans, uninsured
254 mortgage loans or uninsured construction loans, for
255 residential and temporary housing for occupancy by
256 eligible persons and families in this state or that other
257 moneys in an amount approximately equal to such proceeds
258 shall be committed and used for such purpose;

259 (27) To make or participate in the making of uninsured
260 construction loans to sponsors of land development for
261 residential or temporary housing for occupancy by eligible
262 persons and families or to sponsors of residential or
263 temporary housing for occupancy by eligible persons and
264 families, or to eligible persons and families who may
265 construct such housing. Such loans shall be made only upon
266 determination by the housing development fund that
267 construction loans are not otherwise available, wholly or in
268 part, from private lenders upon reasonably equivalent
269 terms and conditions;

270 (28) To make or participate in the making of long-term
271 uninsured mortgage loans to sponsors of residential or
272 temporary housing for occupancy by eligible persons and
273 families, or to eligible persons and families who may
274 purchase or construct such residential housing. Such loans
275 shall be made only upon determination by the housing
276 development fund that long-term mortgage loans are not
277 otherwise available, wholly or in part, from private lenders
278 upon reasonably equivalent terms and conditions;

279 (29) To obtain options to acquire real property, or any
280 interest therein, in its own name, by purchase, or lease, or
281 otherwise, which is found by the housing development fund
282 to be suitable, or potentially suitable, as a site, or as part of a
283 site, for the construction of residential or temporary
284 housing; to hold such real property; to make loans to
285 finance the performance of land development activities on
286 or in connection with any such real property or to perform
287 land development activities on or in connection with any
288 such real property; to sponsor the development of
289 residential and temporary housing for occupancy by
290 eligible persons and families on such real property; and to

291 sell, transfer and convey, lease or otherwise dispose of such
292 real property, or lots, tracts or parcels of such real property,
293 or residential or temporary housing, for such prices, upon
294 such terms, conditions and limitations, and at such time or
295 times as the housing development fund shall determine, to
296 sponsors of residential or temporary housing: *Provided,*
297 That if the housing development fund shall determine that
298 any such real property or any lots, tracts or parcels of such
299 real property are not at any time or times needed for present
300 or future residential or temporary housing, the housing
301 development fund may sell, transfer and convey, lease or
302 otherwise dispose of the same, to such purchasers or lessees,
303 for such prices, upon such terms, conditions and
304 limitations, and for such uses and purposes as the housing
305 development fund shall determine;

306 (30) To make loans, with or without interest, but with
307 such security for repayment as the housing development
308 fund determines reasonably necessary and practicable from
309 the land development fund, if created, established,
310 organized and operated in accordance with the provisions
311 of section twenty-a of this article, to sponsors of land
312 development, to defray development costs and other costs
313 of land development;

314 (31) To exercise all of the rights, powers and authorities
315 of a public housing authority as set forth and provided in
316 article fifteen, chapter sixteen of this code, in any area or
317 areas of the state which the housing development fund shall
318 determine by resolution to be necessary or appropriate;

319 (32) To make or participate in the making of loans to
320 eligible persons and families for the purpose of
321 rehabilitating or improving existing residential and
322 temporary housing, or to owners of existing residential or
323 temporary housing for occupancy by eligible persons and
324 families for the purpose of rehabilitating or improving such
325 residential or temporary housing and, in connection
326 therewith, to refinance existing loans involving the same
327 property. Such loans shall be made only upon
328 determination by the housing development fund that
329 rehabilitation or improvement loans are not otherwise
330 available, wholly or in part, from private lenders upon
331 reasonably equivalent terms and conditions; and

332 (33) Whenever the housing development fund deems it
333 necessary in order to exercise any of its powers set forth in

334 subdivision (29) of this section, and upon being unable to
335 agree with the owner or owners of real property or interest
336 therein sought to be acquired by the fund upon a price for
337 acquisition of private property not being used or operated
338 by the owner in the production of agricultural products, to
339 exercise the powers of eminent domain in the acquisition of
340 such real property or interest therein in the manner
341 provided under chapter fifty-four of this code, and the
342 purposes set forth in subdivision (29) of this section are
343 hereby declared to be public purposes for which private
344 property may be taken. For the purposes of this section, the
345 determination of "use or operation by the owner in the
346 production of agricultural products" means that the
347 principal use of such real estate is for the production of food
348 and fiber by agricultural production other than forestry,
349 and the fund shall not initiate or exercise any powers of
350 eminent domain without first receiving an opinion in
351 writing from both the governor and the commissioner of
352 agriculture of this state that at the time the fund had first
353 attempted to acquire such real estate or interest therein,
354 such real estate or interest therein was not in fact being used
355 or operated by the owner in the production of agricultural
356 products.

**ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT
INVESTMENT POOL.**

§31-18B-1. Legislative intent.

§31-18B-3. Housing development fund to make available mortgage and industrial development investment pool funds for mortgages on single-family residential units; limitation upon type and size of such mortgage.

§31-18B-1. Legislative intent.

1 The Legislature finds and declares that:

2 (1) The vast majority of West Virginians have pursued a
3 goal of owning a home, a center of family life and family
4 independence deeply cherished and highly valued.

5 (2) In many parts of the state there is a large number of
6 single-family residential units that cannot presently be
7 marketed because of high interest rates and adverse
8 economic conditions, or because of having been declared to
9 be a federal disaster area by the Federal Emergency
10 Management Agency.

11 (3) In addition, the state and its inhabitants are
12 suffering high unemployment and low income because of
13 the depressed state of the housing market and because of its
14 inability to attract new business. This situation adversely
15 affects potential home buyers, home builders, skilled
16 craftsmen, realtors and their employees and other citizens.
17 These conditions also reduce state revenues and frustrate
18 the laudable aspirations of many West Virginians to enjoy
19 the pleasures of home ownership and pursue productive
20 employment, or because of having been declared to be a
21 federal disaster area by the Federal Emergency
22 Management Agency.

23 (4) By the cooperative efforts of our citizens there is a
24 large pool of resources held in trust by the state for the sole
25 benefit of West Virginians, including funds reserved for
26 workers injured in the course of employment.

27 (5) Some of these funds, particularly the workers'
28 compensation fund, are invested under the actuarial
29 assumption of a yield less than that of current market
30 investments. Yet the current yield on some of these funds,
31 and particularly the workers' compensation fund, is lower
32 than the actuarially assumed interest rate, and has been for
33 at least three years.

34 (6) The common good does not require that all of these
35 funds be invested so as to yield the very highest investment
36 return offered in the market, especially when the current
37 rate of market interest is:

38 (a) So high that it stifles the legitimate aspirations and
39 attainable dreams of so many West Virginians and West
40 Virginia businesses; and

41 (b) So high that it encourages the flight of capital
42 accumulated by West Virginians for the benefit of West
43 Virginians to national markets where the only
44 consideration is the highest rate of return.

45 (7) In these circumstances, prudence does not require
46 that the state board of investments seek the highest rate of
47 return on all investments. Rather, prudence requires that in
48 investing federally tax-free funds the state board of
49 investments should seek a rate of return commensurate
50 with its public charter. Furthermore, prudence demands
51 that the board immediately seek fiscally sound investments
52 within the state of West Virginia which offer sound security

53 and directly serve the hopes and aspirations in housing and
54 employment of the inhabitants of this state.

55 (8) The survival and renewal of a vibrant market for
56 single-family residential units and the opportunity to
57 attract new businesses to the state is a sound and preferred
58 investment for the resources held in trust by this state for its
59 citizens. Such investments deserve precedence and
60 encouragement, even at the expense of foregoing the
61 highest rate of investment return, an investment return
62 which the tax paying investor might gain in the current
63 market place but which prudence dictates that the state
64 board of investments need not pursue.

65 (9) The success of the undertakings required by this
66 article will be amply demonstrated by: (a) The increased
67 financial stability of the state, (b) the contribution which
68 will occur when the dreams of hundreds of West Virginians
69 are realized, (c) the intrinsic worth of enhancing the
70 cooperative spirit of the inhabitants of this state in
71 employment and housing, and (d) the enhancement of
72 revenue to the state which will be generated by the
73 commerce West Virginia seeks to stimulate. In addition, the
74 rate of return realized by these funds will be at least as high
75 as the actuarial assumptions, and, given the rates of return
76 demonstrated over the past three years, probably higher
77 than the current rate of return.

**§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.**

1 (a) The housing development fund shall make available
2 at the interest rate specified in section six of this article, one
3 half of the moneys from the state mortgage and industrial
4 development investment pool for investment in mortgages
5 on single-family residential units, twenty-five percent of
6 which shall be designated and restricted, for a period of
7 twelve months, to new and never occupied single-family
8 residential units which shall, if not so used, revert to
9 investments in other nonrestricted mortgages. For the
10 purposes of this article, a single-family residential unit
11 means a detached unit on a separate piece of land used

12 solely for the housing of one family, and only one family,
13 which family owns the dwelling and the land or has a
14 mortgage thereupon, and also includes townhouses or row
15 houses used by a family as a residential dwelling, and
16 owned by the family.

17 (b) Loans made by the housing development fund from
18 the state mortgage and industrial development investment
19 pool are to be made solely for the purpose of purchasing real
20 estate upon which is situate a single-family unit, or for the
21 construction of a single-family residential unit upon real
22 estate by the buyer of such unit to provide housing for only
23 himself and his family, or for the purpose of the payment of
24 a loan theretofore made for the construction of a single-
25 family residential unit, or for the purpose of purchasing real
26 estate upon which is situate a single-family residential unit
27 and making additions or improvements thereto: *Provided*,
28 That none of these loans shall be used to refinance existing
29 loans, except construction loans or loans made to such units
30 situated in a federal disaster area as so declared by the
31 Federal Emergency Management Agency. Each such loan
32 must be secured by a first mortgage or first deed of trust
33 upon such real property. Such mortgage or deed of trust
34 shall be held by the housing development fund or its
35 assignee.

36 (c) Loans made pursuant to the provisions of this
37 section may not exceed eighty-five percent of the appraised
38 value of the real estate and single-family residential unit:
39 *Provided*, That if the loan is for the purchase of a single-
40 family residential unit for the purpose of making additions
41 and improvements thereto, such loan shall be no more than
42 eighty-five percent of the appraised value of the property
43 including such improvements when made, as estimated by
44 an appraiser retained by the fund.

45 (d) In no event may a loan obtained pursuant to this
46 section be for an amount greater than seventy-five
47 thousand dollars.

48 (e) Mortgage loans made pursuant to the provisions of
49 this section shall be insured for at least twenty percent of
50 the amount of the loan by either an agency of the federal
51 government or a private mortgage insurance company
52 licensed in the state.

CHAPTER 80

(S. B. 350—By Senators Boettner and Sharpe)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state department of health; the board of health; and increasing the membership of the board by adding a chiropractor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-6. Board of health; membership; appointment and removal of members; compensation.

1 There shall be a state board of health, to be known as
2 the West Virginia board of health. The state board of
3 health shall consist of sixteen members, who shall be
4 appointed by the governor, by and with the advice and
5 consent of the Senate. Three members of the board shall
6 be physicians or surgeons holding the degree of doctor of
7 medicine, one shall be a dentist, one shall be an osteo-
8 pathic physician, one shall be a registered nurse, one shall
9 be a pharmacist, three shall be from mental health disci-
10 plines, one shall be an administrator of a licensed hospital,
11 one shall be an optometrist, one shall be a chiropractor
12 and three shall be representative citizens, none of which
13 representative citizens shall be an employee of, spouse of
14 an employee of, or receive any other financial benefit
15 from any health facility located in this state, and none
16 of whom shall be a member of, or the spouse, child, or
17 parent of, or connected in any way with, any of the pro-
18 fessions named.

19 All persons appointed to membership on the state board
20 of health shall be citizens of this state and shall have been
21 such citizens and residents of the state for at least five

22 years prior to the date of their appointment. Every pro-
23 fessional member of the said board shall be duly licensed
24 to practice such profession on the date of appointment
25 and shall have been so licensed and in active practice of
26 the profession for at least five years immediately preced-
27 ing the date of such appointment. Before appointing any
28 professional member, the governor shall request any pro-
29 fessional society of the profession practiced by the
30 proposed appointee to furnish to the governor a full and
31 complete report concerning the qualifications and suitabil-
32 ity of the proposed appointee. All members of the board
33 shall be appointed for terms of five years each: *Provided,*
34 That persons appointed prior to the effective date of this
35 section shall continue until the completion of their terms
36 of original appointment: *Provided, however,* That in the
37 case of the initial appointments of the representative
38 citizens, one shall be designated to serve for a term of
39 one year, one for a term of two years and one for a term
40 of four years; and in the case of the initial appointments
41 of the members from mental health disciplines, one shall
42 be designated to serve for a term of two years, one for a
43 term of three years and one for a term of five years.
44 Thereafter, the term of each new appointee shall be five
45 years except in the case of any vacancy on the board which
46 shall be filled by the governor by appointment for the
47 unexpired term. No member shall be eligible for more
48 than two terms.

49 No more than nine of the members of the board shall
50 belong to the same political party. At least one member,
51 but not more than four, shall be appointed from each
52 congressional district. No person shall be eligible for
53 appointment to membership on the state board who is a
54 member of any political party executive committee, or
55 who holds any public office or employment under the
56 federal government or under the government of this
57 state or any of its political subdivisions.

58 No member may be removed from office by the gover-
59 nor except for official misconduct, incompetence, neglect
60 of duty or gross immorality and then only in the manner
61 prescribed by law for the removal by the governor of state
62 elective officers: *Provided,* That the expiration, suspen-

63 sion or revocation of the professional license of any pro-
64 fessional member of the board shall be cause for removal.

65 The members of the board shall be paid the sum of
66 thirty-five dollars for each day actually served in atten-
67 dance at official meetings of the board. Each member
68 shall be reimbursed for travel at the rate of fifteen cents
69 per mile if by private automobile and actual cost if travel
70 is by common carrier. Each member shall also be reim-
71 bursed for other actual expenses incurred in the perfor-
72 mance of the duties of his office; except that in the event
73 the expenses are paid, or are to be paid, by a third party,
74 the member shall not be reimbursed by the state.

75 The director of health shall serve as secretary to the
76 board, but shall not be entitled to vote. He shall be in
77 charge of the offices of the board and shall be responsible
78 to the board for the preparation of reports and the col-
79 lection and dissemination of data and other public infor-
80 mation relating to the development of drafts and other
81 materials concerning rules and regulations promulgated
82 by the board.

CHAPTER 81

(Com. Sub. for S. B. 191—By Senators Tomblin, Tucker and R. Williams)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, three-a, four, five, seven, nine, eleven, eighteen-a, twenty-one and twenty-five, article thirteen-a, chapter sixteen of said code; to further amend said article by adding thereto three new sections, designated sections one-a, one-b and one-c; and to amend article one, chapter twenty-four of said code, by adding thereto a new section, designated section one-b, all relating to public service districts and the jurisdiction of the public service commission; setting forth legislative findings; requiring a performance bond for sewer projects to be approved by the

state director of health; expanding the jurisdiction of the public service commission; granting power to promulgate rules and regulations relating to public service districts; mandating county commissions to develop a plan relating to public service districts; general purpose of districts; creating districts and making changes thereto; permitting consolidation of management personnel of said districts; public service commission must consent to and approve the creation, expansion, merger or consolidation of a new district; deleting provisions relating to a referendum; infringing upon powers of county commissions; qualifications of public service district members; current members terms to end upon merger; filing lists of members in districts with the secretary of state; powers of public service boards; removal of members of public service boards; including power of public service commission to petition for the removal of members; reimbursement of expenses for board member who successfully defends against charges; powers of board chairman; increasing members' compensation; procedure; district name; general manager of board; acquisition and operation of district properties; right of eminent domain; extraterritorial powers; rules and regulations; service rates and charges; discontinuance of service including discontinuance of water service for nonpayment of sewer bills; required water and sewer connections; lien for delinquent fees; accounts; audits; sale, lease or rental of water, sewer or gas system by district; distribution of proceeds; complete authority of article; liberal construction; district to be public instrumentality; tax exemption; issuance of certificate of public convenience and necessity by public service commission; borrowing and bond issuance and contracting for the provision of engineering, design or feasibility studies by public service districts; procedure; consent to borrowing and contracting required by public service commission; issuance of revenue bonds or granting of a certificate of public convenience and necessity; creation of new division within the public service commission relating to public service districts.

Be it enacted by the Legislature of West Virginia:

That section nine, article one, chapter sixteen of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, three, three-a, four, five, seven, nine, eleven, eighteen-a, twenty-one and twenty-five, article thirteen-a, chapter sixteen of said code be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections one-a, one-b and one-c; and that article one, chapter twenty-four of said code be amended and reenacted by adding thereto a new section, designated section one-b, all to read as follows:

Chapter

16. Public Health.

24. Public Service Commission.

CHAPTER 16. PUBLIC HEALTH.

Article

1. State Department of Health.

13A. Public Service Districts for Water, Sewerage and Gas Services.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-9. Supervision over local sanitation.

1 No person, firm, company, corporation, institution or
2 association, whether public or private, county or municipal,
3 shall install or establish any system or method of drainage,
4 water supply, sewage or excreta disposal, or solid waste
5 disposal without first obtaining a written permit to install
6 or establish such system or method from the state director
7 of health or his authorized representative. All such systems
8 or methods shall be installed or established in accordance
9 with plans, specifications and instructions issued by the
10 state director of health or which have been approved in
11 writing by the state director of health or his authorized
12 representative: *Provided*, That any person, firm,
13 corporation or association, which shall install, or cause or
14 direct to be installed, any system or method of sewage or
15 excreta disposal, septic system or sewage treatment plant
16 serving three or more single-family residences, or any
17 privately owned multi-unit residences composed of more
18 than two residential units or commercial enterprise, shall
19 enter into a performance bond, with corporate surety,
20 payable to the state department of health, in an amount
21 equivalent to the projected construction costs of such

22 private system, which performance bond shall be
23 conditioned upon the completion and acceptance or final
24 approval by the appropriate public agency of such private
25 sewage system according to plans, specifications or
26 instructions approved in writing by the state director of
27 health or his authorized representative: *Provided, however,*
28 That any person, firm, company, corporation or association,
29 which shall install or cause or direct to be installed, any
30 system or method of sewage or excreta disposal, septic
31 system or sewage treatment plant serving three or more
32 single-family residences, or any privately owned multi-unit
33 residence composed of more than two residential units or
34 commercial enterprise, shall enter into a performance bond,
35 with corporate surety, payable to the state department of
36 health, in an amount sufficient to guarantee the satisfactory
37 operation and maintenance of such septic system, sewage
38 treatment plant or other sewage disposal system, for a
39 period of not less than one (1) year after completion of
40 construction. The state director of health shall determine
41 the bonds required for both the construction and operation
42 and maintenance of such systems and the director of health
43 is hereby authorized and directed, upon written request of
44 the board, to enforce requirements of this section:
45 *Provided further,* That in the event of the payment of
46 proceeds of any performance bond required by this section,
47 the state department of health shall be required to use the
48 proceeds to remedy or to assist in remedying any deficiency
49 in the operation or maintenance of such system or plant or
50 to assist in the completion of the construction project.

51 Whenever the state director of health or his authorized
52 representative finds upon investigation that any system or
53 method of drainage, water supply, sewage or excreta
54 disposal, or solid waste disposal, whether publicly or
55 privately owned, has not been installed in accordance with
56 plans, specifications and instructions issued by the state
57 director of health or approved in writing by the state
58 director of health or his authorized representative, the state
59 director of health or his duly authorized representative may
60 issue an order requiring the owner of such system or method
61 to make alterations as may be necessary to correct the
62 improper condition. Such alterations shall be made within
63 a reasonable time which shall not exceed thirty days, unless

64 a time extension is authorized by the state director of health
65 or his duly authorized representative.

66 The presence of sewage, excreta or solid waste being
67 disposed of in a manner not approved by the state director
68 of health or his authorized representative shall constitute
69 prima facie evidence of the existence of a condition
70 endangering public health.

71 The personnel of the state department of health shall be
72 available to consult and advise with any person, firm,
73 company, corporation, institution or association, whether
74 publicly or privately owned, county or municipal, or public
75 service authority, as to the most appropriate design, method
76 of operation or alteration of any such system or method.

77 Any person, firm, company, corporation, institution or
78 association, whether public or private, county or municipal,
79 who shall violate any provisions of this section shall be
80 deemed guilty of a misdemeanor, and, upon conviction
81 thereof, shall be punished by a fine of not less than twenty-
82 five dollars nor more than five hundred dollars. The
83 continued failure or refusal of such convicted person, firm,
84 company, corporation, institution or association, whether
85 public or private, county or municipal, to make the
86 alterations necessary to protect the public health required
87 by the state director of health or his duly authorized
88 representative shall constitute a separate, distinct and
89 additional offense for each twenty-four hour period of such
90 failure or refusal, and, upon conviction thereof, the violator
91 shall be fined not less than twenty-five dollars nor more
92 than five hundred dollars for each such conviction:
93 *Provided*, That none of the provisions contained in this
94 section shall apply to those commercial or industrial wastes
95 which are subject to the regulatory control of the West
96 Virginia department of natural resources or the West
97 Virginia air pollution control commission.
98 Magistrates shall have concurrent jurisdiction with the
99 circuit courts of this state for violations of any provisions of
100 this section.

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE
AND GAS SERVICES.**

§16-13A-1. Legislative findings.

§16-13A-1a. Jurisdiction of the public service commission.

- §16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.
- §16-13A-1c. General purpose of districts.
- §16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.
- §16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
- §16-13A-3a. Removal of members of public service boards.
- §16-13A-4. Board chairman; members' compensation; procedure; district name.
- §16-13A-5. General manager of board.
- §16-13A-7. Acquisition and operation of district properties.
- §16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
- §16-13A-11. Accounts; audit.
- §16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.
- §16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.
- §16-13A-25. Borrowing and bond issuance; procedure.

§16-13A-1. Legislative findings.

1 The Legislature of the state of West Virginia hereby
2 determines and finds that the present system of public
3 service districts within the state has provided a valuable
4 service at a reasonable cost to persons who would otherwise
5 have been unable to obtain public utility services. To
6 further this effort, and to ensure that all areas of the state
7 are benefiting from the availability of public service district
8 utility services and to further correct areas with health
9 hazards, the Legislature concludes that it is in the best
10 interest of the public to implement better management of
11 public service district resources by expanding the ability
12 and the authority of the public service commission to assist
13 public service districts by offering advice and assistance in
14 operational, financial and regulatory affairs.

15 In addition to the expanded powers which shall be given
16 to the public service commission, the Legislature also
17 concludes that it is in the best interest of the public for each
18 county commission to review current technology available
19 and consider consolidating existing public service districts
20 where it is feasible and will not result in the interference

21 with existing bond instruments. Further, if such
22 consolidation is not feasible, the Legislature finds that it is
23 in the best interest of the public for each county commission
24 to review current technology available and consider
25 consolidating or centralizing the management of public
26 service districts within its county or multi-county area to
27 achieve efficiency of operations. The Legislature also finds
28 that additional guidelines should be imposed on the
29 creation of new public service districts and that county
30 commissions shall dissolve inactive public service districts
31 as hereinafter provided. The Legislature also finds that the
32 public service commission shall promulgate rules and
33 regulations to effectuate the expanded powers given to the
34 commission relating to public service districts.

§16-13A-1a. Jurisdiction of the public service commission.

1 The jurisdiction of the public service commission relating
2 to public service districts shall be expanded to include the
3 following powers, and such powers shall be in addition to
4 all other powers of the public service commission set forth
5 in this code:

6 (a) To study, modify, approve, deny or amend the plans
7 created under section one-b of this article for consolidation
8 or merger of public service districts and their facilities,
9 personnel or administration;

10 (b) To petition the appropriate circuit court for the
11 removal of a public service district board member or
12 members; and

13 (c) To create by general order a separate division within
14 the public service commission to provide assistance to
15 public service districts in technological, operational,
16 financial and regulatory matters.

§16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

1 Each county commission shall conduct a study of all
2 public service districts which have their principal offices
3 within its county and shall develop a plan relating to the
4 creation, consolidation, merger, expansion or dissolution of

5 such districts or the consolidation or merger of
6 management and administrative services and personnel
7 and shall present such plan to the public service
8 commission for approval, disapproval, or modification:
9 *Provided*, That within ninety days of the effective date of
10 this section each county commission in this state shall elect
11 either to perform its own study or request that the public
12 service commission perform such study. Each county
13 commission electing to perform its own study shall have one
14 year from the date of election to present such plan to the
15 public service commission. For each county wherein the
16 county commission elects not to perform its own study, the
17 public service commission shall conduct a study of such
18 county. The public service commission shall establish a
19 schedule for such studies upon a priority basis, with those
20 counties perceived to have the greatest need of creation or
21 consolidation of public service districts receiving the
22 highest priority. In establishing the priority schedule, and
23 in the performance of each study, the department of health
24 and the department of natural resources shall offer their
25 assistance and cooperation to the public service
26 commission. Upon completion by the public service
27 commission of each study, it shall be submitted to the
28 appropriate county commission for review and comment.
29 Each county commission shall have six months in which to
30 review the study conducted by the public service
31 commission, suggest changes or modifications thereof, and
32 present such plan to the public service commission. All
33 county plans, whether conducted by the county commission
34 itself or submitted as a result of a public service commission
35 study, shall, by order, be approved, disapproved or
36 modified by the public service commission in accordance
37 with rules and regulations promulgated by the public
38 service commission and such order shall be implemented by
39 the county commission.

§16-13A-1c. General purpose of districts.

1 Any territory constituting the whole or any part of one or
2 more counties in the state so situated that the construction
3 or acquisition by purchase or otherwise and the
4 maintenance, operation, improvement and extension of,
5 properties supplying water or sewerage services or gas

6 distribution services or all of these within such territory,
7 will be conducive to the preservation of the public health,
8 comfort and convenience of such area, may be constituted a
9 public service district under and in the manner provided by
10 this article. The words "public service properties," when
11 used in this article, shall mean and include any facility used
12 or to be used for or in connection with (1) the diversion,
13 development, pumping, impounding, treatment, storage,
14 distribution or furnishing of water to or for the public for
15 industrial, public, private or other uses (herein sometimes
16 referred to as "water facilities"), (2) the collection,
17 treatment, purification or disposal of liquid or solid wastes,
18 sewage or industrial wastes (herein sometimes referred to
19 as "sewer facilities" or "landfills") or (3) the distribution or
20 the furnishing of natural gas to the public for industrial,
21 public, private or other uses (herein sometimes referred to
22 as "gas utilities or gas system").

**§16-13A-2. Creation of districts by county commission;
enlarging, reducing or dissolving district;
consolidation; agreements, etc.; infringing
upon powers of county commission; filing
list of members and districts with the
secretary of state.**

1 The county commission of any county may, on its own
2 motion by order duly adopted or upon the recommendation
3 of the public service commission, propose the creation of
4 such public service district within such county, setting
5 forth in such order a description, including metes and
6 bounds, sufficient to identify the territory to be embraced
7 therein and the name of such proposed district, or twenty-
8 five percent of the registered voters who reside within the
9 limits of such proposed public service district within one or
10 more counties may petition for the creation thereof, which
11 petition shall contain a description, including metes and
12 bounds, sufficient to identify the territory to be embraced
13 therein and the name of such proposed district: *Provided,*
14 That after the effective date of this section, no new public
15 service district shall be created under this section without
16 the written consent and approval of the public service
17 commission, which approval and consent shall be in
18 accordance with rules and regulations promulgated by the

19 public service commission and may only be requested after
20 consent is given by the appropriate county commission or
21 commissions pursuant to this section. Any territory may be
22 included regardless of whether or not such territory
23 includes one or more cities, incorporated towns or other
24 municipal corporations which own and operate any public
25 service properties and regardless of whether or not it
26 includes one or more cities, incorporated towns or other
27 municipal corporations being served by privately owned
28 public service properties: *Provided, however,* That the
29 same territory shall not be included within the boundaries
30 of more than one public service district except where such
31 territory or part thereof is included within the boundaries
32 of a separate public service district organized to supply
33 water, sewerage services or gas facilities not being
34 furnished within such territory or part thereof: *Provided*
35 *further,* That no city, incorporated town or other municipal
36 corporation shall be included within the boundaries of such
37 proposed district except upon the adoption of a resolution
38 of the governing body of such city, incorporated town or
39 other municipal corporation consenting.

40 Such petition shall be filed in the office of the clerk of the
41 county commission of the county in which the territory to
42 constitute the proposed district is situated, and if such
43 territory is situated in more than one county, then such
44 petition shall be filed in the office of the clerk of the county
45 commission of the county in which the major portion of
46 such territory extends, and a copy thereof (omitting
47 signatures) shall be filed with each of the clerks of the
48 county commission of the other county or counties into
49 which the territory extends. The clerk of the county
50 commission receiving such petition shall present it to the
51 county commission of such county at the first regular
52 meeting after such filing or at a special meeting called for
53 the consideration thereof.

54 When the county commission of any county enters an
55 order on its own motion proposing the creation of a public
56 service district, as aforesaid, or when a petition for such
57 creation is presented, as aforesaid, the county commission
58 shall at the same session fix a date of hearing in such county
59 on the creation of the proposed public service district,
60 which date so fixed shall be not more than forty days nor

61 less than twenty days from the date of such action. If the
62 territory proposed to be included is situated in more than
63 one county, the county commission, when fixing a date of
64 hearing, shall provide for notifying the county commission
65 and clerk thereof of each of the other counties into which
66 the territory extends of the date so fixed. The clerk of the
67 county commission of each county in which any territory in
68 the proposed public service district is located shall cause
69 notice of such hearing and the time and place thereof, and
70 setting forth a description of all of the territory proposed to
71 be included therein to be given by publication as a Class I
72 legal advertisement in compliance with the provisions of
73 article three, chapter fifty-nine of this code, and the
74 publication area for such publication shall be by
75 publication in each city, incorporated town or municipal
76 corporation if available in each county in which any
77 territory in the proposed public service district is located.
78 The publication shall be at least ten days prior to such
79 hearing. In all cases where proceedings for the creation of
80 such public service districts are initiated by petition as
81 aforesaid, the person filing the petition shall advance or
82 satisfactorily indemnify the payment of the cost and
83 expenses of publishing the hearing notice, and otherwise
84 the costs and expenses of such notice shall be paid in the
85 first instance by the county commission out of contingent
86 funds or any other funds available or made available for
87 that purpose. In addition to the notice required herein to be
88 published, there shall also be posted in at least five
89 conspicuous places in the proposed public service district, a
90 notice containing the same information as is contained in
91 the published notice. The posted notices shall be posted not
92 less than ten days before the hearing.

93 All persons residing in or owning or having any interest in
94 property in such proposed public service district shall have
95 an opportunity to be heard for and against its creation. At
96 such hearing the county commission before which the
97 hearing is conducted shall consider and determine the
98 feasibility of the creation of the proposed district. If the
99 county commission determines that the construction or
100 acquisition by purchase or otherwise and maintenance,
101 operation, improvement and extension of public service
102 properties by such public service district will be conducive

103 to the preservation of public health, comfort and
104 convenience of such area, the county commission shall by
105 order create such public service district. If the county
106 commission, after due consideration, determines that the
107 proposed district will not be conducive to the preservation
108 of public health, comfort or convenience of such area or that
109 the creation of the proposed district as set forth and
110 described in the petition or order is not feasible, it may
111 refuse to enter an order creating the district or it may enter
112 an order amending the description of the proposed district
113 and create the district as amended. If the county
114 commission determines that any other public service
115 district or districts can adequately serve the area of the
116 proposed public service district, whether by expansion,
117 merger or other means, it shall refuse to enter an order
118 creating the proposed district and shall enter an order
119 expanding, merging or consolidating the area with an
120 existing public service district, in accordance with rules
121 and regulations adopted by the public service commission
122 for such purpose: *Provided*, That no expansion of a public
123 service district may occur if the present or proposed
124 physical facilities of the public service district are
125 determined by the appropriate county commission or the
126 public service commission to be inadequate to provide such
127 expanded service. The clerk of the county commission of
128 each county into which any part of such district extends
129 shall retain in his office an authentic copy of the order
130 creating, expanding, merging or consolidating the district:
131 *Provided, however*, That within ten days after the entry of
132 an order creating, expanding or merging or consolidating a
133 district, such order must be filed for review and approval by
134 the public service commission. The public service
135 commission shall provide a hearing in the affected county
136 on the matter and may approve, reject or modify the order of
137 the county commission if it finds it is in the best interests of
138 the public to do so. The public service commission shall
139 adopt rules and regulations relating to such filings and the
140 approval, disapproval or modification of county
141 commission orders for creating, expanding, merging or
142 consolidating districts.

143 The county commission may, if in its discretion it deems it
144 necessary, feasible and proper, enlarge the district to

145 include additional areas, reduce the area of the district,
146 where facilities, equipment, service or materials have not
147 been extended, or dissolve the district if inactive or
148 establish or consolidate two or more such districts. If
149 consolidation of districts is not feasible, the county
150 commission may consolidate and centralize management
151 and administration of districts within its county or multi-
152 county area to achieve efficiency of operations: *Provided,*
153 That where the county commission determines on its own
154 motion by order entered of record, or there is a petition to
155 enlarge the district, merge and consolidate districts, or the
156 management and administration thereof, reduce the area of
157 the district or dissolve the district if inactive, all of the
158 applicable provisions of this article providing for hearing,
159 notice of hearing and approval by the public service
160 commission shall apply with like effect as if a district were
161 being created. The commission shall at all times attempt to
162 bring about the expansion or merger of existing public
163 service districts in order to provide increased services and
164 to eliminate the need for creation of new public service
165 districts in those areas which are not currently serviced by a
166 public service district: *Provided, however,* That where two
167 or more public service districts are consolidated pursuant
168 to this section, any rate differentials may continue for the
169 period of bonded indebtedness incurred prior to
170 consolidation. The districts may not enter into any
171 agreement, contract or covenant that infringes upon,
172 impairs, abridges or usurps the duties, rights or powers of
173 the county commission, as set forth in this article, or
174 conflicts with any provision of this article. A list of all
175 districts and their current board members shall be filed by
176 the county commission with the secretary of state and the
177 public service commission by the first day of July of each
178 year.

**§16-13A-3. District to be a public corporation and political
subdivision; powers thereof; public service
boards.**

1 From and after the date of the adoption of the order
2 creating any public service district, it shall thereafter be a
3 public corporation and political subdivision of the state,
4 but without any power to levy or collect ad valorem taxes.

5 Each district may acquire, own and hold property, both real
6 and personal, in its corporate name, and may sue, may be
7 sued, may adopt an official seal and may enter into
8 contracts necessary or incidental to its purposes, including
9 contracts with any city, incorporated town or other
10 municipal corporation located within or without its
11 boundaries for furnishing wholesale supply of water for the
12 distribution system of the city, town or other municipal
13 corporation, and contract for the operation, maintenance,
14 servicing, repair and extension of any properties owned by
15 it or for the operation and improvement or extension by the
16 district of all or any part of the existing municipally owned
17 public service properties of any city, incorporated town or
18 other municipal corporation included within the district:
19 *Provided*, That no contract shall extend beyond a maximum
20 of forty years, but provisions may be included therein for a
21 renewal or successive renewals thereof and shall conform to
22 and comply with the rights of the holders of any
23 outstanding bonds issued by the municipalities for the
24 public service properties.

25 The powers of each public service district shall be vested
26 in and exercised by a public service board consisting of not
27 less than three members, who shall be persons residing
28 within the district who possess certain educational,
29 business or work experience which will be conducive to
30 operating a public service district. Each board member
31 shall, within six months of taking office, successfully
32 complete the training program to be established and
33 administered by the public service commission in
34 conjunction with the department of natural resources and
35 the department of health. Board members shall not be or
36 become pecuniarily interested, directly or indirectly, in the
37 proceeds of any contract or service, or in furnishing any
38 supplies or materials to the district, nor shall a former
39 board member be hired by the district in any capacity
40 within a minimum of twelve months after such board
41 member's term has expired or such board member has
42 resigned from the district board. The members shall be
43 appointed in the following manner:

44 Each city, incorporated town or other municipal
45 corporation having a population of more than three
46 thousand but less than eighteen thousand shall be entitled

47 to appoint one member of the board, and each such city,
48 incorporated town or other municipal corporation having a
49 population in excess of eighteen thousand shall be entitled
50 to appoint one additional member of the board for each
51 additional eighteen thousand population. The members of
52 the board representing such cities, incorporated towns or
53 other municipal corporations shall be residents thereof and
54 shall be appointed by a resolution of the governing bodies
55 thereof and upon the filing of a certified copy or copies of
56 the resolution or resolutions in the office of the clerk of the
57 county commission which entered the order creating the
58 district, the persons so appointed shall thereby become
59 members of the board without any further act or
60 proceedings. If the number of members of the board so
61 appointed by the governing bodies of cities, incorporated
62 towns or other municipal corporations included in the
63 district shall equal or exceed three, then no further
64 members shall be appointed to the board and the members
65 shall be and constitute the board of the district.

66 If no city, incorporated town or other municipal
67 corporation having a population of more than three
68 thousand is included within the district, then the county
69 commission which entered the order creating the district
70 shall appoint three members of the board, who are persons
71 residing within the district, which three members shall
72 become members of and constitute the board of the district
73 without any further act or proceedings.

74 If the number of members of the board appointed by the
75 governing bodies of cities, incorporated towns or other
76 municipal corporations included within the district is less
77 than three, then the county commission which entered the
78 order creating the district shall appoint such additional
79 member or members of the board, who are persons residing
80 within the district, as is necessary to make the number of
81 members of the board equal three, and the additional
82 member or members shall thereupon become members of
83 the board; and the member or members appointed by the
84 governing bodies of the cities, incorporated towns or other
85 municipal corporations included within the district and the
86 additional member or members appointed by the county
87 commission as aforesaid, shall be and constitute the board

88 of the district. A person may serve as a member of the board
89 in one or more public service districts.

90 The population of any city, incorporated town or other
91 municipal corporation, for the purpose of determining the
92 number of members of the board, if any, to be appointed by
93 the governing body or bodies thereof, shall be conclusively
94 considered to be the population stated for such city,
95 incorporated town or other municipal corporation in the
96 last official federal census.

97 Notwithstanding any provision of this code to the
98 contrary, whenever a district is consolidated or merged
99 pursuant to section two of this article, the terms of office of
100 the existing board members shall end on the effective date
101 of the merger or consolidation. The county commission
102 shall appoint a new board according to rules and
103 regulations promulgated by the public service commission.

104 The respective terms of office of the members of the first
105 board shall be fixed by the county commission and shall be
106 as equally divided as may be, that is approximately one
107 third of the members for a term of two years, a like number
108 for a term of four, and the term of the remaining member or
109 members for six years, from the first day of the month
110 during which the appointments are made. The first
111 members of the board appointed as aforesaid shall meet at
112 the office of the clerk of the county commission which
113 entered the order creating the district as soon as practicable
114 after the appointments and shall qualify by taking an oath
115 of office: *Provided*, That any member or members of the
116 board may be removed from their respective office as
117 provided in section three-a of this article.

118 Any vacancy shall be filled for the unexpired term within
119 thirty days, otherwise successor members of the board shall
120 be appointed for terms of six years and the terms of office
121 shall continue until successors have been appointed and
122 qualified. All successor members shall be appointed in the
123 same manner as the member succeeded was appointed.

124 The board shall organize within thirty days following the
125 first appointments and annually thereafter at its first
126 meeting after the first day of January of each year by
127 selecting one of its members to serve as chairman and by
128 appointing a secretary and a treasurer who need not be
129 members of the board. The secretary shall keep a record of

130 all proceedings of the board which shall be available for
131 inspection as other public records. Duplicate records shall
132 be filed with the county commission and shall include the
133 minutes of all board meetings. The treasurer is lawful
134 custodian of all funds of the public service district and shall
135 pay same out on orders authorized or approved by the
136 board. The secretary and treasurer shall perform other
137 duties appertaining to the affairs of the district and shall
138 receive salaries as shall be prescribed by the board. The
139 treasurer shall furnish bond in an amount to be fixed by the
140 board for the use and benefit of the district.

141 The members of the board, and the chairman, secretary
142 and treasurer thereof, shall make available to the county
143 commission, at all times, all of its books and records
144 pertaining to the district's operation, finances and affairs,
145 for inspection and audit. The board shall meet at least
146 monthly.

§16-13A-3a. Removal of members of public service board.

1 The county commission or the public service commission
2 or any other appointive body creating or establishing a
3 public service district under the provisions of this article, or
4 any group of five percent or more of the customers of a
5 public service district, may petition the circuit court of the
6 county in which the district maintains its principal office
7 for the removal of any member of the governing board
8 thereof for consistent violations of any provisions of this
9 article, for reasonable cause which includes, but is not
10 limited to, a continued failure to attend meetings of the
11 board, failure to diligently pursue the objectives for which
12 the district was created, or failure to perform any other duty
13 either prescribed by law or required by a final order of the
14 public service commission or for any malfeasance in public
15 office. Any board member charged with a violation under
16 this section who offers a successful defense against such
17 charges shall be reimbursed for the reasonable costs of such
18 defense from district revenues. Such costs shall be
19 considered as costs associated with rate determination by
20 the public service district and the public service
21 commission. If the circuit court judge hearing the petition
22 for removal finds that the charges are frivolous in nature,
23 the judge may assess all or part of the court costs, plus the

24 reasonable costs associated with the board member's
25 defense, against the party or parties who petitioned the
26 court for the board member's removal.

**§16-13A-4. Board chairman; members' compensation;
procedure; district name.**

1 The chairman shall preside at all meetings of the board
2 and may vote as any other members of the board but if he
3 should be absent from any meeting, the remaining members
4 may select a temporary chairman and if the member
5 selected as chairman resigns as such or ceases for any
6 reason to be a member of the board, the board shall select
7 one of its members as chairman to serve until the next
8 annual organization meeting. Salaries of each of its board
9 members shall be as follows: For districts with fewer than
10 six hundred customers, each board member shall receive
11 fifty dollars per attendance at regular monthly meetings
12 and thirty dollars per attendance at additional special
13 meetings, total salary not to exceed nine hundred dollars
14 per annum; for districts with six hundred customers or
15 more but fewer than two thousand customers, each board
16 member shall receive one hundred dollars per attendance at
17 regular monthly meetings and fifty dollars per attendance
18 at additional special meetings, total salary not to exceed
19 eighteen hundred dollars per annum; and for districts with
20 two thousand customers or more, each board member shall
21 receive one hundred dollars per attendance at regular
22 monthly meetings and fifty dollars per attendance at
23 additional special meetings, total salary not to exceed three
24 thousand dollars per annum. The public service district
25 shall certify the number of customers served to the public
26 service commission beginning on the first day of July, one
27 thousand nine hundred eighty-six, and continue each fiscal
28 year thereafter. Board members may be reimbursed for all
29 reasonable and necessary expenses actually incurred in the
30 performance of their duties as provided for by the rules and
31 regulations of the board. The board shall by resolution
32 determine its own rules of procedure, fix the time and place
33 of its meetings and the manner in which special meetings
34 may be called. Public notice of meetings shall be given in
35 accordance with section three, article nine-a, chapter six of
36 this code. Emergency meetings may be called as provided by

37 section three, article nine-a, chapter six of this code. A
38 majority of the members constituting the board also
39 constitute a quorum to do business. The members of the
40 board are not personally liable or responsible for any
41 obligations of the district or the board but are answerable
42 only for willful misconduct in the performance of their
43 duties. At any time prior to the issuance of bonds as
44 hereinafter provided, the board may by resolution change
45 the official or corporate name of the public service district
46 and such change shall be effective from and after filing an
47 authenticated copy of such resolution with the clerk of the
48 county commission of each county in which the territory
49 embraced within such district or any part thereof is located.
50 The official name of any district created under the
51 provisions of this article may contain the name or names of
52 any city, incorporated town or other municipal corporation
53 included therein or the name of any county or counties in
54 which it is located.

§16-13A-5. General manager of board.

1 The board may employ a general manager to serve a term
2 of not more than five years and until his successor is
3 employed, and his compensation shall be fixed by
4 resolution of the board. Such general manager shall devote
5 all or the required portion of his time to the affairs of the
6 district and may employ, discharge and fix the
7 compensation of all employees of the district, except as in
8 this article otherwise provided, and he shall perform and
9 exercise such other powers and duties as may be conferred
10 upon him by the board.

11 Such general manager shall be chosen without regard to
12 his political affiliations and upon the sole basis of his
13 administrative and technical qualifications to manage
14 public service properties and affairs of the district and he
15 may be discharged only upon the affirmative vote of two
16 thirds of the board. Such general manager need not be a
17 resident of the district at the time he is chosen. Such general
18 manager may not be a member of the board but shall be an
19 employee of the board.

20 The board of any public service district which purchases
21 water or sewer service from a municipal water or sewer
22 system or another public service district may, as an

23 alternative to hiring its own general manager, elect to
24 permit the general manager of the municipal water or sewer
25 system or public service district from which such water or
26 sewer service is purchased provide professional
27 management to the district, if the appropriate municipality
28 or public service board agrees to provide such assistance.
29 The general manager shall receive reasonable
30 compensation for such service.

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

1 The board of such districts shall have the supervision and
2 control of all public service properties acquired or
3 constructed by the district, and shall have power, and it
4 shall be its duty, to maintain, operate, extend and improve
5 the same. All contracts involving the expenditure by the
6 district of more than five thousand dollars for construction
7 work or for the purchase of equipment and improvements,
8 extensions or replacements, shall be entered into only after
9 notice inviting bids shall have been published as a Class I
10 legal advertisement in compliance with the provisions of
11 article three, chapter fifty-nine of this code, and the
12 publication area for such publication shall be as specified in
13 section two of this article in the county or counties in which
14 the district is located. The publication shall not be less than
15 ten days prior to the making of any such contract. To the
16 extent allowed by law, in-state contractors shall be given
17 first priority in awarding public service district contracts. It
18 shall be the duty of the board to ensure that local in-state
19 labor shall be utilized to the greatest extent possible when
20 hiring laborers for public service district construction or
21 maintenance repair jobs. It shall further be the duty of the
22 board to encourage contractors to use American-made
23 products in their construction to the extent possible. Any
24 obligations incurred of any kind or character shall not in
25 any event constitute or be deemed an indebtedness within
26 the meaning of any of the provisions or limitations of the
27 constitution, but all such obligations shall be payable solely
28 and only out of revenues derived from the operation of the
29 public service properties of the district or from proceeds of
30 bonds issued as hereinafter provided. No continuing
31 contract for the purchase of materials or supplies or for

32 furnishing the district with electrical energy or power shall
33 be entered into for a longer period than fifteen years.

**§16-13A-9. Rules and regulations; service rates and charges;
discontinuance of service; required water and
sewer connections.**

1 The board may make, enact and enforce all needful rules
2 and regulations in connection with the acquisition,
3 construction, improvement, extension, management,
4 maintenance, operation, care, protection and the use of any
5 public service properties owned or controlled by the
6 district, and the board shall establish rates and charges for
7 the services and facilities it furnishes, which shall be
8 sufficient at all times, notwithstanding the provisions of
9 any other law or laws, to pay the cost of maintenance,
10 operation and depreciation of such public service
11 properties and principal of and interest on all bonds issued,
12 other obligations incurred under the provisions of this
13 article and all reserve or other payments provided for in the
14 proceedings which authorized the issuance of any bonds
15 hereunder. The schedule of such rates and charges may be
16 based upon either (a) the consumption of water or gas on
17 premises connected with such facilities, taking into
18 consideration domestic, commercial, industrial and public
19 use of water and gas; or (b) the number and kind of fixtures
20 connected with such facilities located on the various
21 premises; or (c) the number of persons served by such
22 facilities; or (d) any combination thereof; or (e) may be
23 determined on any other basis or classification which the
24 board may determine to be fair and reasonable, taking into
25 consideration the location of the premises served and the
26 nature and extent of the services and facilities furnished.
27 Where water, sewer and gas services are all furnished to any
28 premises, the schedule of charges may be billed as a single
29 amount for the aggregate thereof. Whenever any rates,
30 rentals or charges for services or facilities furnished remain
31 unpaid for a period of thirty days after the same become due
32 and payable, the property and the owner thereof, as well as
33 the user of the services and facilities provided shall be
34 delinquent and the owner, user and property shall be held
35 liable at law until such time as all such rates and charges are
36 fully paid: *Provided*, That the property owner shall be given

37 notice of any said delinquency by certified mail, return
38 receipt requested. The board may, under reasonable rules
39 and regulations promulgated by the public service
40 commission, shut off and discontinue water or gas services
41 to all delinquent users of either water or gas facilities, or
42 both.

43 In the event that any publicly or privately owned utility,
44 city, incorporated town, other municipal corporation or
45 other public service district included within the district
46 owns and operates separately either water facilities or
47 sewer facilities, and the district owns and operates the other
48 kind of facilities, either water or sewer, as the case may be,
49 then the district and such publicly or privately owned
50 utility, city, incorporated town or other municipal
51 corporation or other public service district may covenant
52 and contract with each other to shut off and discontinue the
53 supplying of water service for the nonpayment of sewer
54 service fees and charges: *Provided*, That any contracts
55 entered into by a public service district pursuant to this
56 section shall be submitted to the public service commission
57 for approval. Any public service district providing water
58 and sewer service to its customers shall have the right to
59 terminate water service for delinquency in payment of
60 either water or sewer bills. Where one public service district
61 is providing sewer service and another public service
62 district or a municipality included within the boundaries of
63 the sewer district is providing water service, and the district
64 providing sewer service experiences a delinquency in
65 payment, the district or the municipality included within
66 the boundaries of the sewer district that is providing water
67 service, upon the request of the district providing sewer
68 service to the delinquent account, shall terminate its water
69 service to the customer having the delinquent sewer
70 account: *Provided, however*, That any termination of water
71 service must comply with all rules, regulations and orders
72 of the public service commission.

73 Any district furnishing sewer facilities within the district
74 may require, or may by petition to the circuit court of the
75 county in which the property is located, compel or may
76 require the department of health to compel all owners,
77 tenants or occupants of any houses, dwellings and buildings
78 located near any such sewer facilities, where sewage will

79 flow by gravity or be transported by such other methods
80 approved by the department of health including, but not
81 limited to, vacuum and pressure systems, approved under
82 the provisions of section nine, article one, chapter sixteen of
83 this code, from such houses, dwellings or buildings into
84 such sewer facilities, to connect with and use such sewer
85 facilities, and to cease the use of all other means for the
86 collection, treatment and disposal of sewage and waste
87 matters from such houses, dwellings and buildings where
88 there is such gravity flow or transportation by such other
89 methods approved by the department of health including,
90 but not limited to, vacuum and pressure systems, approved
91 under the provisions of section nine, article one, chapter
92 sixteen of this code, and such houses, dwellings and
93 buildings can be adequately served by the sewer facilities of
94 the district, and it is hereby found, determined and declared
95 that the mandatory use of such sewer facilities provided for
96 in this paragraph is necessary and essential for the health
97 and welfare of the inhabitants and residents of such
98 districts and of the state: *Provided*, That if the public
99 service district determines that the property owner must
100 connect with the sewer facilities even when sewage from
101 such dwellings may not flow to the main line by gravity and
102 the property owner must incur costs for any changes in the
103 existing dwellings' exterior plumbing in order to connect to
104 the main sewer line, the public service district board shall
105 authorize the district to pay all reasonable costs for such
106 changes in the exterior plumbing, including, but not limited
107 to, installation, operation, maintenance and purchase of a
108 pump, or any other method approved by the department of
109 health; maintenance and operation costs for such extra
110 installation should be reflected in the user's charge for
111 approval of the public service commission. The circuit court
112 shall adjudicate the merits of such petition by summary
113 hearing to be held not later than thirty days after service of
114 petition to the appropriate owners, tenants or occupants.
115 Whenever any district has made available sewer facilities
116 to any owner, tenant or occupant of any house, dwelling or
117 building located near such sewer facility, and the engineer
118 for the district has certified that such sewer facilities are
119 available to and are adequate to serve such owner, tenant or
120 occupant, and sewage will flow by gravity or be transported

121 by such other methods approved by the department of
122 health from such house, dwelling or building into such
123 sewer facilities, the district may charge, and such owner,
124 tenant or occupant shall pay the rates and charges for
125 services established under this article only after thirty-day
126 notice of the availability of the facilities has been received
127 by the owner.

128 All delinquent fees, rates and charges of the district for
129 either water facilities, sewer facilities or gas facilities are
130 liens on the premises served of equal dignity, rank and
131 priority with the lien on such premises of state, county,
132 school and municipal taxes. In addition to the other
133 remedies provided in this section, public service districts
134 are hereby granted a deferral of filing fees or other fees and
135 costs incidental to the bringing and maintenance of an
136 action in magistrates court for the collection of delinquent
137 water, sewer or gas bills. If the district collects the
138 delinquent account, plus reasonable costs, from its
139 customer or other responsible party, the district shall pay to
140 the magistrate the normal filing fee and reasonable costs
141 which were previously deferred. In addition, each public
142 service district may exchange with other public service
143 districts a list of delinquent accounts.

144 Anything in this section to the contrary notwithstanding,
145 any establishment, as defined in section two, article five-a,
146 chapter twenty, now or hereafter operating its own sewage
147 disposal system pursuant to a permit issued by the
148 department of natural resources, as prescribed by section
149 seven, article five-a, chapter twenty of this code, is exempt
150 from the provisions of this section.

§16-13A-11. Accounts; audit.

1 The general manager, under direction of the board, shall
2 install and maintain a proper system of accounts, in
3 accordance with all rules, regulations or orders pertaining
4 thereto by the public service commission, showing receipts
5 from operation and application of the same, and the board
6 shall at least once a year cause such accounts to be properly
7 audited: *Provided*, That such audit may be any audit by an
8 independent public accountant completed within one year
9 of the time required for the submission of the report:
10 *Provided, however*, That if the district is required to have

11 its books, records and accounts audited annually by an
12 independent certified public accountant as a result of any
13 covenant in any board resolution or bond instrument, a
14 copy of such audit may be submitted in satisfaction of the
15 requirements of this section, and is hereby found, declared
16 and determined to be sufficient to satisfy the requirements
17 of article nine, chapter six of this code pertaining to the
18 annual audit report by the state tax commission. A copy of
19 the audit shall be forwarded within thirty days of
20 submission to the county commission and to the public
21 service commission.

22 The treasurer of each public service district shall keep
23 and preserve all financial records of the public service
24 district for ten years, and shall at all times have such
25 records readily available for public inspection. At the end of
26 his term of office, the treasurer of each public service
27 district shall promptly deliver all financial records of the
28 public service district to his successor in office. Any
29 treasurer of a public service district who knowingly or
30 willfully violates any provision of this section is guilty of a
31 misdemeanor, and shall be fined not less than one hundred
32 dollars nor more than five hundred dollars or imprisoned in
33 the county jail not more than ten days, or both.

**§16-13A-18a. Sale, lease or rental of water, sewer or gas system
by district; distribution of proceeds.**

1 In any case where a public service district owns a water,
2 sewer or gas system, and all the members of the public
3 service board thereof deem it for the best interests of the
4 district to sell, lease or rent such water, sewer or gas system
5 to any municipality or privately owned water, sewer or gas
6 system, or to any water, sewer or gas system owned by an
7 adjacent public service district, the board may so sell, lease
8 or rent such water, sewer or gas system upon such terms and
9 conditions as said board, in its discretion, considers in the
10 best interests of the district: *Provided*, That such sale,
11 leasing or rental may be made only upon approval by the
12 public service commission of West Virginia.

13 In the event of any such sale, the proceeds thereof, if any,
14 remaining after payment of all outstanding bonds and other
15 obligations of the district, shall be ratably distributed to
16 any persons who have made contributions in aid of

17 construction of such water, sewer or gas system, such
18 distribution not to exceed the actual amount of any such
19 contribution, without interest, and any balance of funds
20 thereafter remaining shall be paid to the county
21 commission of the county in which the major portion of
22 such water, sewer or gas system is located to be placed in the
23 general funds of such county commission.

§16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.

1 This article shall constitute full and complete authority
2 for the creation of public service districts and for carrying
3 out the powers and duties of same as herein provided. The
4 provisions of this article shall be liberally construed to
5 accomplish its purpose and no procedure or proceedings,
6 notices, consents or approvals, shall be required in
7 connection therewith except as may be prescribed by this
8 article: *Provided*, That all functions, powers and duties of
9 the public service commission of West Virginia, the state
10 department of health and the state water resources board
11 shall remain unaffected by this article. Every district
12 organized, consolidated, merged or expanded under this
13 article is declared to be a public instrumentality created
14 and functioning in the interest and for the benefit of the
15 public, and its property and income and any bonds issued
16 by it shall be exempt from taxation by the state of West
17 Virginia, and the other taxing bodies of the state: *Provided*,
18 *however*, That the board of any such district may use and
19 apply any of its available revenues and income for the
20 payment of what such board determines to be tax or license
21 fee equivalents to any local taxing body and in any
22 proceedings for the issuance of bonds of such district may
23 reserve the right to annually pay a fixed or computable sum
24 to such taxing bodies as such tax or license fee equivalent.

§16-13A-25. Borrowing and bond issuance; procedure.

1 Notwithstanding any other provisions of this article to
2 the contrary, a public service district shall not borrow
3 money, enter into contracts for the provision of engineering,
4 design or feasibility studies, issue or contract to issue
5 revenue bonds or exercise any of the powers conferred by

6 the provisions of section thirteen, twenty or twenty-four of
7 this article, without the prior consent and approval of the
8 public service commission. Unless the properties to be
9 constructed or acquired represent ordinary extensions or
10 repairs of existing systems in the usual course of business, a
11 public service district must first obtain a certificate of
12 public convenience and necessity from the public service
13 commission in accordance with the provisions of chapter
14 twenty-four of this code, when a public service district is
15 seeking to acquire or construct public service property.

16 Sixty days prior to making formal application for said
17 certificate, the public service district shall prefile with the
18 public service commission its plans and supporting
19 information for said project and shall publish a Class II
20 legal advertisement in a newspaper or newspapers of
21 general circulation in each city, incorporated town or
22 municipal corporation if available in the district, which
23 legal advertisement shall state:

24 (a) The amount of money to be borrowed, or the amount
25 of revenue bonds to be issued; *Provided*, That if the amount
26 is an estimate, the notice may be stated in terms of an
27 amount "not to exceed" a specific amount;

28 (b) The interest rate and terms of the loan or bonds:
29 *Provided*, That if the interest rate is an estimate, the notice
30 may be stated in terms of a rate "not to exceed" a specific
31 rate;

32 (c) The public service properties to be acquired or
33 constructed, and the cost of same;

34 (d) The anticipated rates which will be charged by the
35 district: *Provided*, That if the rates are an estimate, the
36 notice may be stated in terms of rates "not to exceed" a
37 specific rate; and

38 (e) The date that the formal application for a certificate
39 of public convenience and necessity is to be filed with the
40 public service commission. The public service commission
41 may grant its consent and approval for the certificate, or
42 any other request for approval under this section, subject to
43 such terms and conditions as may be necessary for the
44 protection of the public interest, pursuant to the provisions
45 of chapter twenty-four of this code, or may withhold such
46 consent and approval for the protection of the public
47 interest.

48 In the event of disapproval, the reasons therefor shall be
49 assigned in writing by the commission.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1b. Supplemental rule for reorganization.

1 The public service commission shall, by general order,
2 create a division within its staff which shall provide legal,
3 engineering, financial and accounting advice and
4 assistance to public service districts in operational,
5 financial and regulatory matters, and may perform or
6 participate in the studies required under section one-b,
7 article thirteen-a, chapter sixteen of this code.

CHAPTER 82

(Com. Sub. for S. B. 379—By Senator Lucht)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to local boards of health; and authorizing charges by local boards for inspections or tests conducted.

Be it enacted by the Legislature of West Virginia:

That article two, 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 seven, to read as follows:

ARTICLE 2. LOCAL HEALTH OFFICERS.

§16-2-7. Charges by local boards for inspections or testing of water or sewer systems.

1 Any local board of health created pursuant to the pro-
2 visions of this chapter may charge and collect a fee for
3 the expense of all water or sewer system inspections or
4 tests when requested and conducted as a part of its

5 authority conferred by this chapter. The amount of such
6 charge for expense of inspection or test shall not exceed
7 a total fee of thirty-five dollars regardless of the mileage
8 traveled or time consumed and such charge shall be
9 submitted to and approved by the state department of
10 health: *Provided*, That no charge for expense of inspec-
11 tion or testing may be made by any local board of health
12 unless it is the agency making the regular inspection or
13 testing.

CHAPTER 83

(S. B. 167—By Senators Ash and Holliday)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of county or municipal health officers; permitting medical or surgical services to inmates of county or municipal jails and requiring reports of those services; and establishing payment to the local board of health for provision of such services.

Be it enacted by the Legislature of West Virginia:

That section five, 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-5. Powers and duties of county or municipal health officers; required reporting of diseases.

1 The county or municipal health officer appointed by any
2 local board of health created pursuant to the provisions
3 of this article shall be the executive officer of such board
4 of health. Under the supervision of the board, he or she
5 shall administer the provisions of this article, all other
6 laws of this state relating to public health and applicable
7 to his or her county or municipality, and the rules, regu-

8 lations and orders of such county or municipal board of
9 health and of the state board of health, so far as such
10 rules, regulations and orders are applicable to his or her
11 county or municipality.

12 Such health officer shall attend, but not vote, at all
13 meetings of his or her county or municipal board of
14 health. He or she shall act as secretary of such board and
15 shall be in charge of its offices. He or she shall supervise
16 and direct the activities of county or municipal health
17 services, employees and facilities except that the duties
18 of such health officer shall not include the rendering of
19 medical or surgical services on an individual basis to
20 wards of the county or municipality. The county health
21 officer or his or her designated representative shall de-
22 termine when corrections have been made sufficient to
23 warrant removal of any restriction or limitation placed
24 by an employee under his or her supervision.

25 The duties of such health officer may include the ren-
26 dering of medical or surgical services on an individual
27 basis to inmates of any public institution operated or
28 maintained by any county commission or municipality.
29 The county commission or municipality shall reimburse
30 the local board of health an agreed amount for the provi-
31 sion of these services. The health officer shall file reports
32 in a timely manner, but no less frequently than once each
33 twelve months with the county commission or municipal-
34 ity, as the case may be, naming the medical or surgical
35 service rendered and the person to whom rendered.

36 It shall be the duty of every practicing physician to
37 report to the municipal or county health officer, where
38 there is such official, immediately on diagnosis, those
39 diseases or conditions for which a report is required by
40 the state board of health and in the manner specified by
41 the state health director which may arise or come under
42 the physician's treatment. Any health officer receiving
43 such reports shall make to the state director of health
44 a weekly report in a manner specified by the director of
45 health.

CHAPTER 84

(S. B. 15—By Senators Holmes and Chernenko)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two-a, relating to public health; hotels and restaurants; and requiring all food dispensing facilities which use sulfites as a preservative on salad bar items to warn persons using the salad bar of such use.

Be it enacted by the Legislature of West Virginia:

That article six, 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 twenty-two-a, to read as follows:

ARTICLE 6. HOTELS AND RESTAURANTS.

§16-6-22a. Sulfite use warning.

1 Any establishment regulated pursuant to this article
2 utilizing sulfites as a preservative on salad bars shall
3 prominently display a public notice in the following
4 words:

5 "NOTICE TO PERSONS USING SALAD BAR: This
6 establishment applies sulfites as a preservative on items
7 in the salad bar."

8 The state director of health is responsible for adminis-
9 tering this section. He may delegate the duties to any
10 county boards of health or combined local boards of
11 health.

12 The state health department shall publish standards,
13 for such notices, assuring a uniform size and color of the
14 notices to be purchased by the owner of any such estab-
15 lishment.

CHAPTER 85

(H. B. 2182—By Delegate Smith and Delegate White)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article twenty-nine-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing funding for the indigent care fund, to be administered by the department of human services; and termination of article on specified date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29C. INDIGENT CARE.

§16-29C-3. Indigent care fund.

§16-29C-5. Effective date and termination date.

§16-29C-3. Indigent care fund.

1 (a) There is hereby created in the state treasury a
2 special fund to be known as the indigent care fund.

3 (b) Moneys from the following sources shall be paid
4 into the indigent care fund:

5 (1) For the state's fiscal year beginning in the year
6 one thousand nine hundred eighty-six, the Legislature
7 shall make an appropriation to the indigent care fund
8 in an amount to be determined by it which shall be in
9 addition to its general appropriation to the state's
10 medicaid program; and

11 (2) On the first day of July, one thousand nine
12 hundred eighty-six, the West Virginia health care cost
13 review authority may assess hospitals under the juris-
14 diction of the authority, with the exception of hospitals
15 owned and operated by the state government, an
16 aggregate amount of three million dollars: *Provided,*

17 That if the authority makes such an assessment, the
18 authority shall certify that such assessment is for a one-
19 year period and is necessary for the health and well-
20 being of all the citizens of the state and provide the
21 reasons therefor.

22 (c) Each hospital assessed pursuant to subdivision (2),
23 subsection (b) of this section shall be assessed on a pro
24 rata basis based upon a three year average of net
25 revenues less expenditures and taxes for each hospital's
26 one thousand nine hundred eighty-three, one thousand
27 nine hundred eighty-four and one thousand nine
28 hundred eighty-five fiscal years weighted by the
29 hospital's ratio of West Virginia gross medicaid
30 revenues to gross patient revenues for the same three-year
31 period. Payment of this assessment shall be remittable
32 no later than the fifteenth day of August, one thousand
33 nine hundred eighty-six.

34 (d) All moneys paid into the indigent care fund shall
35 be used to supplement the Legislature's general appro-
36 priation to the state's medicaid program in order that
37 the state may receive corresponding matching funds
38 from the federal government and the state's medicaid
39 program shall be utilized to finance the amount of
40 inpatient and outpatient acute care hospital services
41 practicable.

42 (e) If it is determined by the United States depart-
43 ment of health and human services that federal medi-
44 caid funds will not be forthcoming to match all or part
45 of the funds assessed from hospitals, that portion of the
46 hospital assessment for which no matching federal funds
47 will be forthcoming will not be collected from hospitals
48 and any such hospital assessment already collected will
49 be returned to said hospitals.

50 (f) Any balance remaining in the indigent care fund
51 at the end of the state's fiscal year shall not revert to
52 the state treasury, but shall remain in the indigent care
53 fund and be used consistent with subsection (d) of this
54 section.

55 (g) The West Virginia health care cost review author-
56 ity shall administer and promulgate rules and regula-

57 tions to implement the provisions of this section:
58 *Provided*, That in so doing the authority shall seek the
59 advice of the department of human services: *Pro-*
60 *vided, however*, That nothing in this article shall be
61 construed to give the West Virginia health care cost
62 review authority any jurisdiction over the medicaid
63 program or its operations.

§16-29C-5. Effective date and termination date.

1 This article shall be effective from passage, and,
2 notwithstanding the provisions of section four of this
3 article, shall terminate on the thirtieth day of June, one
4 thousand nine hundred eighty-seven.

CHAPTER 86

(H. B. 1266—By Delegate Hoblitzell and Delegate Kelly)

[Passed February 14, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; and to amend article seven, chapter fifty-five of said code, by adding thereto a new section, designated section seventeen, all relating to hazardous substance emergency response training programs and personnel; requiring the state fire commission to promulgate certain regulations relating thereto; defining certain terms; and granting certain trained persons immunity from civil liability for rendering advice or assistance at a hazardous substance emergency.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-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-a; and that article seven, chapter fifty-five of said code be amended by adding thereto a new section, designated section seventeen, all to read as follows:

Chapter**29. Miscellaneous Boards and Officers.****55. Actions, Suits and Arbitration; Judicial Sales.****CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.****ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.****§29-3-5a. Hazardous substance emergency response
training programs.**

1 (a) Within one hundred twenty days of the effective
2 date of this section, the state fire commission shall
3 promulgate rules and regulations pursuant to chapter
4 twenty-nine-a of this code establishing criteria for
5 qualified training programs in hazardous substance
6 emergency response activities and procedures for such
7 qualified training programs to be certified by the state
8 fire marshal.

9 (b) For the purposes of this section, "hazardous
10 substance" means any "hazardous substance" as defined
11 in subsection (g), section three, article thirty-one,
12 chapter sixteen of this code, any "chemical substances
13 and materials" listed in the rules or regulations
14 promulgated by the commissioner of labor pursuant to
15 section eighteen, article three, chapter twenty-one of this
16 code, and any "hazardous waste" as defined in subdivi-
17 sion (7), section three, article five-e, chapter twenty of
18 this code.

**CHAPTER 55. ACTIONS, SUITS AND
ARBITRATION; JUDICIAL SALE.****ARTICLE 7. ACTIONS FOR INJURIES.****§55-7-17. Aid by trained hazardous substance response
personnel; immunity from civil liability;
definitions.**

1 No person trained in a qualified program of hazard-
2 ous substance emergency response certified by the state
3 fire marshal pursuant to rules and regulations promul-
4 gated by authority of subsection (a), section five-a,
5 article three, chapter twenty-nine of this code, who in
6 good faith renders advice or assistance at the scene of

7 an actual or threatened discharge of any hazardous
8 substance and receives no remuneration for rendering
9 such advice or assistance, is liable for any civil damages
10 as the result of any act or omission in rendering such
11 advice or assistance: *Provided*, That the exemption from
12 liability for civil damages of this section shall be
13 extended to any such person who receives reimburse-
14 ment for out-of-pocket expenses incurred in rendering
15 such advice or assistance or compensation from his
16 regular employer for the time period during which he
17 was actually engaged in rendering such advice or
18 assistance but shall not be extended to any such person
19 who by his act or omission caused or contributed to the
20 cause of such actual or threatened discharge of any
21 hazardous substance.

22 For the purposes of this section, "hazardous sub-
23 stance" means any "hazardous substance" as defined in
24 subsection (g), section three, article thirty-one, chapter
25 sixteen of this code; any "chemical substances and
26 materials" listed in the rules or regulations promulgated
27 by the commissioner of labor pursuant to section
28 eighteen, article three, chapter twenty-one of this code;
29 and any "hazardous waste" as defined in subdivision (6),
30 section three, article five-e, chapter twenty of this code.

CHAPTER 87

(H. B. 1328—By Delegate Minard and Delegate Hoblitzell)

[Passed February 25, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the board of risk and insurance management.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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.

§29-12-12. Reestablishment of board as state board of risk and insurance management.

1 After having conducted a performance and fiscal
 2 audit through its joint committee on government
 3 operations, pursuant to section nine, article ten, chapter
 4 four of this code, the Legislature hereby finds and
 5 declares that the state board of insurance should be
 6 continued and reestablished but shall be known and
 7 referred to as the state board of risk and insurance
 8 management. Accordingly, notwithstanding the provi-
 9 sions of section four, article ten, chapter four of this
 10 code, the state board of insurance shall continue to exist
 11 until the first day of July, one thousand nine hundred
 12 ninety-two, but shall be known and referred to as the
 13 state board of risk and insurance management.

CHAPTER 88

(S. B. 336—By Senator Tucker)

[Passed March 3, 1986; 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 kinds of insurance; accident and sickness to include loss of income 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:

5 (a) Life insurance—Life insurance is insurance on
6 human lives including endowment benefits, additional
7 benefits in the event of death or dismemberment by
8 accident or accidental means, additional benefits for dis-
9 ability and annuities.

10 (b) Accident and sickness—Accident and sickness
11 insurance is insurance against bodily injury, disability or
12 death by accident or accidental means, or the expense
13 thereof, or against disability or expense resulting from
14 sickness, and insurance relating thereto. Group credit
15 accident and health insurance may also include loss of
16 income insurance which is insurance against the failure
17 of a debtor to pay his or her monthly obligation due to
18 involuntary loss of employment. For the purposes of this
19 definition, involuntary loss of employment means the
20 debtor loses employment income (salary or wages) as a
21 result of unemployment caused by individual or mass
22 layoff, general strikes, labor disputes, lockout or termina-
23 tion by employer for other than willful or criminal mis-
24 conduct. Any or all of the above mentioned perils may be
25 included in an insurance policy, at the discretion of the
26 policyholder.

27 (c) Fire—Fire insurance is insurance on real or per-
28 sonal property of every kind and interest therein, against
29 loss or damage from any or all hazard or cause; and
30 against loss consequential upon such loss or damage, other
31 than noncontractual liability for any such loss or damage.
32 Fire insurance shall also include miscellaneous insurance
33 as defined in paragraph (12), subdivision (e), of this
34 section.

35 (d) Marine—Marine insurance is insurance:

36 (1) Against any and all kinds of loss or damage to
37 vessels, craft, aircraft, cars, automobiles and vehicles of
38 every kind, as well as all goods, freight, cargoes, merchan-
39 dise, effects, disbursements, profits, moneys, bullion, pre-
40 cious stones, securities, choses in action, evidences of debt,
41 valuable papers, bottomry and respondentia interests and
42 all other kinds of property and interests therein, in

43 respect to, appertaining to or in connection with any and
44 all risks or perils of navigation, transit or transportation,
45 including war risks, on or under any seas or other waters,
46 on land (above or below ground), or in the air, or while
47 being assembled, packed, crated, baled, compressed or
48 similarly prepared for shipment or while awaiting the
49 same or during any delays, storage, transshipment, or
50 reshipment incident thereto, including marine builders'
51 risks and all personal property floater risks;

52 (2) Against any and all kinds of loss or damage to per-
53 son or to property in connection with or appertaining to
54 a marine, inland marine, transit or transportation in-
55 surance, including liability for loss of or damage to either,
56 arising out of or in connection with the construction,
57 repair, operation, maintenance or use of the subject mat-
58 ter of such insurance (but not including life insurance or
59 surety bonds nor insurance against loss by reason of
60 bodily injury to the person arising out of the ownership,
61 maintenance or use of automobiles);

62 (3) Against any and all kinds of loss or damage to
63 precious stones, jewels, jewelry, gold, silver and other
64 precious metals, whether used in business or trade or
65 otherwise and whether the same be in course of trans-
66 portation or otherwise;

67 (4) Against any and all kinds of loss or damage to
68 bridges, tunnels and other instrumentalities of transporta-
69 tion and communication (excluding buildings, their fur-
70 niture and furnishings, fixed contents and supplies held
71 in storage) unless fire, windstorm, sprinkler leakage, hail,
72 explosion, earthquake, riot or civil commotion or any or
73 all of them are the only hazards to be covered;

74 (5) Against any and all kinds of loss or damage to
75 piers, wharves, docks and ships, excluding the risks of
76 fire, windstorm, sprinkler leakage, hail, explosion, earth-
77 quake, riot and civil commotion and each of them;

78 (6) Against any and all kinds of loss or damage to
79 other aids to navigation and transportation, including,
80 dry docks and marine railways, dams and appurtenant
81 facilities for control of waterways; and

82 (7) Marine protection and indemnity insurance, which

83 is insurance against, or against legal liability of the in-
84 sured for, loss, damage or expense arising out of, or inci-
85 dent to, the ownership, operation, chartering, mainte-
86 nance, use, repair or construction of any vessel, craft or
87 instrumentality in use in ocean or inland waterways,
88 including liability of the insured for personal injury, ill-
89 ness or death or for loss of or damage to the property of
90 another person.

91 (e) Casualty—Casualty insurance includes:

92 (1) Vehicle insurance, which is insurance against loss
93 of or damage to any land vehicle or aircraft or any draft
94 or riding animal or to property while contained therein or
95 thereon or being loaded therein or therefrom, from any
96 hazard or cause, and against any loss, liability or expense
97 resulting from or incident to ownership, maintenance or
98 use of any such vehicle, aircraft or animal; together with
99 insurance against accidental death or accidental injury to
100 individuals, including the named insured, while in, en-
101 tering, alighting from, adjusting, repairing or cranking, or
102 caused by being struck by any vehicle, aircraft or draft
103 or riding animal, if such insurance is issued as a part of in-
104 surance on the vehicle, aircraft or draft or riding animal;

105 (2) Liability insurance, which is insurance against
106 legal liability for the death, injury or disability of any
107 human being, or for damage to property; and provisions
108 for medical, hospital, surgical, disability benefits to in-
109 jured persons and funeral and death benefits to depend-
110 ents, beneficiaries or personal representatives of persons
111 killed, irrespective of legal liability of the insured, when
112 issued as an incidental coverage with or supplemental to
113 liability insurance;

114 (3) Burglary and theft insurance, which is insurance
115 against loss or damage by burglary, theft, larceny, rob-
116 bery, forgery, fraud, vandalism, malicious mischief, con-
117 fiscation, or wrongful conversion, disposal or concealment,
118 or from any attempt at any of the foregoing, including
119 supplemental coverages for medical, hospital, surgical and
120 funeral benefits sustained by the named insured or other
121 person as a result of bodily injury during the commission
122 of a burglary, robbery or theft by another; also insurance

123 against loss of or damage to moneys, coins, bullion, se-
124 curities, notes, drafts, acceptances, or any other valuable
125 papers and documents, resulting from any cause;

126 (4) Personal property floater insurance, which is in-
127 surance upon personal effects against loss or damage from
128 any cause;

129 (5) Glass insurance, which is insurance against loss or
130 damage to glass, including its lettering, ornamentation,
131 and fittings;

132 (6) Boiler and machinery insurance, which is insurance
133 against any liability and loss or damage to property or
134 interest resulting from accidents to or explosion of boilers,
135 pipes, pressure containers, machinery or apparatus, and
136 to make inspection of and issue certificates of inspection
137 upon boilers, machinery and apparatus of any kind,
138 whether or not insured;

139 (7) Leakage and fire extinguishing equipment insur-
140 ance, which is insurance against loss or damage to any
141 property or interest caused by the breakage or leakage of
142 sprinklers, hoses, pumps and other fire extinguishing
143 equipment or apparatus, water mains, pipes and con-
144 tainers, or by water entering through leaks or openings in
145 buildings, and insurance against loss or damage to such
146 sprinklers, hoses, pumps and other fire extinguishing
147 equipment or apparatus;

148 (8) Credit insurance, which is insurance against loss or
149 damage resulting from failure of debtors to pay their
150 obligations to the insured. Credit insurance shall include
151 loss of income insurance which is insurance against the
152 failure of a debtor to pay his or her monthly obligation
153 due to involuntary loss of employment. For the purpose of
154 this definition, involuntary loss of employment means
155 the debtor loses employment income (salary or wages) as
156 a result of unemployment caused by individual or mass
157 layoff, general strikes, labor disputes, lockout or termina-
158 tion by employer for other than willful or criminal
159 misconduct; any, or all of the above mentioned perils
160 may be included in an insurance policy, at the discretion
161 of the policyholder;

162 (9) Malpractice insurance, which is insurance against

163 legal liability of the insured, and against loss, damage or
164 expense incidental to a claim of such liability, and includ-
165 ing medical, hospital, surgical and funeral benefits to
166 injured persons, irrespective of legal liability of the in-
167 sured arising out of the death, injury or disablement of
168 any person, or arising out of damage to the economic
169 interest of any person, as the result of negligence in ren-
170 dering expert, fiduciary or professional service;

171 (10) Entertainment insurance, which is insurance in-
172 demnifying the producer of any motion picture, televi-
173 sion, radio, theatrical, sport, spectacle, entertainment or
174 similar production, event or exhibition against loss from
175 interruption, postponement or cancellation thereof due to
176 death, accidental injury or sickness of performers, par-
177 ticipants, directors or other principals;

178 (11) Mine subsidence insurance as provided for in
179 article thirty of this chapter; and

180 (12) Miscellaneous insurance, which is insurance
181 against any other kind of loss, damage or liability prop-
182 erly a subject of insurance and not within any other kind
183 of insurance as defined in this chapter, if such insurance
184 is not disapproved by the commissioner as being contrary
185 to law or public policy.

186 (f) Surety—Surety insurance includes:

187 (1) Fidelity insurance, which is insurance guaranteeing
188 the fidelity of persons holding positions of public or pri-
189 vate trust;

190 (2) Insurance guaranteeing the performance of con-
191 tracts, other than insurance policies, and guaranteeing
192 and executing bonds, undertakings, and contracts of
193 suretyship: *Provided*, That surety insurance does not in-
194 clude the guaranteeing and executing of bonds by pro-
195 fessional bondsmen in criminal cases, or by individuals
196 not in the business of becoming a surety for compensation
197 upon bonds;

198 (3) Insurance indemnifying banks, bankers, brokers,
199 financial or moneyed corporations or associations against
200 loss, resulting from any cause, of bills of exchange, notes,
201 bonds, securities, evidences of debt, deeds, mortgages,

202 warehouse receipts or other valuable papers, documents,
203 money, precious metals and articles made therefrom,
204 jewelry, watches, necklaces, bracelets, gems, precious and
205 semiprecious stones, including any loss while they are
206 being transported in armored motor vehicles or by mes-
207 senger, but not including any other risks of transportation
208 or navigation, and also insurance against loss or damage
209 to such an insured's premises or to his furnishings, fix-
210 tures, equipment, safes and vaults therein, caused by
211 burglary, robbery, theft, vandalism or malicious mischief;
212 or any attempt to commit such crimes; and
213 (4) Title insurance, which is insurance of owners of
214 property or others having an interest therein, or liens or
215 encumbrances thereon, against loss by encumbrance, de-
216 fective title, invalidity or adverse claim to title.

CHAPTER 89

(Com. Sub. for H. B. 1520—By Mr. Speaker Mr. Albright and Delegate Swann,
by request of the Executive)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three; sections six, thirteen, sixteen, sixteen-a and twenty-eight, article twelve; section six, article twenty; section twelve, article twenty-one; sections two and sixteen, article twenty-two; section twenty-nine, article twenty-three; sections four and five, article twenty-four; section seven, article twenty-five; section twenty-two, article twenty-five-a, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article six of said chapter by adding thereto a new section, designated section thirty-four, relating to increasing the fees and charges assessed against insurers and their agents, brokers, solicitors, and service representatives; terminating the existing two percent insurance premium tax on excess line brokers, which tax is payable into the state general revenue fund, on and after the first day of January, one

thousand nine hundred eighty-seven; providing for the preservation of and payment of tax liability already accrued under the two percent tax and for the prior calendar year to be remitted and paid subsequent to elimination of such tax; retaining the additional four percent insurance premium tax on such excess line brokers, which tax is payable into a special account in the state treasury and thereafter distributable after legislative appropriation to local municipal policemen's and firemen's pension and relief funds and to volunteer and part-volunteer fire companies and departments, and making the collection and payment of such four percent tax on a quarterly basis rather than annually, once a year; and increasing the license, annual, filing, or applications fees for rating organizations, reciprocal insurers, farmers' mutual insurance companies, fraternal benefit societies, hospital service corporations, medical service corporations, dental service corporations, health care corporations and health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

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

Article

3. **Licensing, Fees and Taxation of Insurers.**
6. **The Insurance Policy.**
12. **Agents, Brokers, Solicitors and Excess Line.**
20. **Rates and Rating Organizations.**
21. **Reciprocal Insurers.**
22. **Farmers' Mutual Fire Insurance Companies.**
23. **Fraternal Benefit Societies.**
24. **Hospital Service Corporations, Medical Service Corporations and Dental Service Corporations.**
25. **Health Care Corporations.**

25A. Health Maintenance Organization Act.**ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.****§33-3-13. Fees and charges.**

1 (a) Except where it is otherwise specially provided,
2 the commissioner shall demand and receive the follow-
3 ing fees from all insurers: For annual fee for each
4 license, two hundred dollars; for receiving and filing
5 annual reports, one hundred dollars; for valuation of
6 policies of life insurers organized under the laws of this
7 state, one and one-half cents for each one thousand
8 dollars of insurance; for valuation of policies of life
9 insurers organized under the laws of any other state
10 licensed to transact insurance in this state the rate for
11 each one thousand dollars of insurance valued as is
12 imposed by the other state upon any similar insurer
13 organized under the laws of this state licensed to
14 transact insurance in the other state; for filing certified
15 copy of articles of incorporation, fifty dollars; for filing
16 copy of its charter, fifty dollars; for filing statements
17 preliminary to admission, one hundred dollars; for filing
18 any additional paper required by law or furnishing
19 copies thereof, one dollar; for every certificate of
20 valuation, copy of report or certificate of condition of
21 company to be filed in any other state, fifteen dollars;
22 for each licensed agent, twenty-five dollars. The
23 commissioner may by regulation set reasonable charges
24 for printed forms for the annual statements required by
25 law. He may sell at cost publications purchased by, or
26 printed on behalf of the commissioner.

27 (b) Such fees and charges collected by the commis-
28 sioner under the provisions of this section or elsewhere
29 in this chapter and designated for use by the commis-
30 sioner for the operation of the department of insurance
31 or for the purposes of this section, shall be paid into a
32 special revenue account, hereby created in the state
33 treasury, to be expended and used by the commissioner,
34 upon his requisition and after appropriation by the
35 Legislature, for the operation of the department of
36 insurance.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-34. Fee for form and rate filing.

1 A fee of ten dollars for every form filing and ten
2 dollars for every rate filing shall be submitted with each
3 filing. If a form filing or rate filing is made on behalf
4 of more than one insurer, other than a filing made by
5 a rating organization licensed by the commissioner
6 pursuant to section six, article twenty of this chapter,
7 the fee shall be submitted as if the filing were made by
8 each individual insurer. Fees submitted pursuant to this
9 section shall not be refunded if the form filing or rate
10 filing, for which the fee was submitted, is disapproved
11 in whole or in part by the commissioner. The refiling
12 of a form filing or rate filing previously disapproved by
13 the commissioner shall be considered a new filing for
14 the purposes of the filing fee: *Provided*, That any request
15 by the commissioner for additional information pertain-
16 ing to a form filing shall not be considered a new filing
17 for purposes of the filing fee. All fees collected pursuant
18 to this section shall be used by the commissioner for the
19 operation of the department of insurance.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-6. License fee.

§33-12-13. Licensing of excess line brokers.

§33-12-16. Annual return of two percent tax on excess line brokers; termination of such two percent tax on January 1, 1987, with accrued liability thereunder for prior calendar year preserved and required to be remitted.

§33-12-16a. Four percent premium tax on excess line brokers, payable by quarterly and final returns; and distribution to local level departments as specified.

§33-12-6. License fee.

1 The fee for an agent's license shall be twenty-five
2 dollars as provided in section thirteen, article three of
3 this chapter, the fee for a solicitor's license shall be
4 twenty-five dollars, and the fee for a broker's license
5 shall be twenty-five dollars, except that when any other
6 state imposes a tax, bond, fine, penalty, license fee or
7 other obligation or prohibition on agents resident in this
8 state, the same tax, bond, fine, penalty, license fee or
9 other obligation or prohibition shall be imposed upon

10 agents (where licensing of nonresident agents is permit-
11 ted under this article) or brokers of such other state
12 licensed or seeking a license in this state. All fees and
13 moneys so collected shall be used for the purposes set
14 forth in section thirteen, article three of this chapter.

§33-12-13. Licensing of excess line brokers.

1 (a) Any licensed insurance agent determined by the
2 commissioner to be competent and trustworthy for the
3 purpose, may be licensed as an excess line broker.

4 (b) The license fee shall be two hundred dollars, all
5 fees so collected are to be used for the purposes set forth
6 in section thirteen, article three of this chapter.

7 (c) Prior to issuance of the license, the applicant
8 therefor shall file with the commissioner and thereafter
9 maintain in force for so long as the license or any
10 renewal thereof remains in effect, a bond in favor of the
11 state of West Virginia in the penal sum of two thousand
12 dollars, with an authorized corporate surety approved
13 by the commissioner, conditioned that he will conduct
14 business under the license in accordance with this
15 article, that he will promptly remit the taxes provided
16 by section sixteen of this article, and that he will
17 properly account to the person entitled thereto for funds
18 received by him through transactions under the license.
19 No bond shall be terminated unless at least thirty days'
20 prior written notice thereof is filed with the commis-
21 sioner.

**§33-12-16. Annual return of two percent tax on excess
line brokers; termination of such two per-
cent tax on January 1, 1987, with accrued
liability thereunder for prior calendar year
preserved and required to be remitted.**

1 (a) Every excess line broker licensed pursuant to the
2 provisions of this article shall make a return annually,
3 under oath, on or before the first day of March to the
4 commissioner of the gross amount of premiums charged
5 the insureds by the insurers for insurance procured by
6 such licensee, pursuant to such license during the
7 previous calendar year, together with the amount of tax

8 due thereon. The annual tax required to be paid, under
9 the provisions of this section, shall be a sum equal to two
10 percent of the gross premiums received on the gross
11 business procured by such licensee on subjects of
12 insurance, resident, located or to be performed in this
13 state and obtained pursuant to the provisions of this
14 article, including any so-called dividends on participat-
15 ing insurance policies applied in reduction of premiums,
16 less premiums returnable for cancellation. All such
17 taxes paid to the commissioner shall be paid by him into
18 the state treasury for the benefit of the state fund.

19 (b) On and after the first day of January, one
20 thousand nine hundred eighty-seven, the annual two
21 percent tax imposed by this section shall cease, expire
22 and be of no further force or effect whatsoever thereaf-
23 ter, but the final payment of tax in respect of the two
24 percent tax levied by this section and being for the
25 previous calendar year of one thousand nine hundred
26 eighty-six, shall be payable and shall be remitted to the
27 commissioner by the first day of March, one thousand
28 nine hundred eighty-seven, as provided by this section.
29 All of the other general provisions of this section in
30 respect of return requirements and other general
31 administration provisions are retained for the adminis-
32 tration purposes of the premium taxes remaining under
33 this article.

**§33-12-16a. Four percent premium tax on excess line
brokers, payable by quarterly and final
returns; and distributable to local level
departments as specified.**

1 For the purpose of providing additional revenue for
2 municipal policemen's and firemen's pension and relief
3 funds and additional revenue for volunteer and part-
4 volunteer fire companies and departments, an additional
5 annual premium tax is hereby imposed and required to
6 be paid, on a calendar year basis and in quarterly
7 estimated installments due and payable on or before the
8 twenty-fifth day of the month succeeding the close of the
9 quarter in which they accrued, except for the fourth
10 quarter, in respect of which taxes shall be due and
11 payable and final computation of actual total liability

12 for the prior calendar year shall be made, less credit for
13 the three quarterly estimated payments prior made, and
14 with such return to be made on or before the first day
15 of March of the succeeding year. This additional tax
16 shall be a sum equal to four percent of the gross
17 premiums received on the gross business procured by
18 such licensed excess line broker on subjects of insurance,
19 resident, located or to be performed in this state and
20 obtained pursuant to the provisions of this article,
21 including any so-called dividends on participating
22 insurance policies applied in reduction of premiums, less
23 premiums returnable for cancellation. All provisions of
24 this article relating to the levy, imposition and collection
25 of the regular premium tax are applicable to the levy,
26 imposition and collection of this additional tax.

27 All such taxes paid to the commissioner pursuant to
28 this section shall be paid by him into a special account
29 in the state treasury, designated "municipal pensions
30 and protection fund," and after appropriation by the
31 Legislature, shall be distributed in accordance with the
32 provisions of subsection (c), section fourteen-d, article
33 three of this chapter.

§33-12-28. Service representative permits.

1 Individual nonresidents of West Virginia, employed
2 on salary by an insurer, who enter the state to assist and
3 advise resident agents in the solicitation, negotiation,
4 making or procuring of contracts of insurance on risks
5 resident, located or to be performed in West Virginia
6 shall obtain a service representative permit. The
7 commissioner may, upon receipt of a properly prepared
8 application, issue the permit without requiring a
9 written examination therefor. The fee for a service
10 representative permit shall be twenty-five dollars and
11 the permit shall expire at midnight on the thirty-first
12 day of March next following the date of issuance.
13 Issuance of a service representative permit shall not
14 entitle the holder to countersign policies. The represen-
15 tative shall not in any manner solicit, negotiate, make
16 or procure insurance in this state except when in the
17 actual company of the licensed resident agent whom he
18 has been assigned to assist. All fees collected under this

19 section shall be used for the purposes set forth in section
20 thirteen, article three of this chapter.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-6. Rating organizations.

1 (a) A corporation, an unincorporated association, a
2 partnership or an individual, whether located within or
3 outside this state, may make application to the commis-
4 sioner for license as a rating organization for such kinds
5 of casualty insurance or subdivisions thereof, or for such
6 kinds of fire and marine insurance or subdivision or
7 class of risk or a part or combination thereof as are
8 specified in its application and shall file therewith (1)
9 a copy of its constitution, its articles of agreement or
10 association or its certificates of incorporation, and of its
11 bylaws, rules and regulations governing the conduct of
12 its business, (2) a list of its members and subscribers,
13 (3) the name and address of a resident of this state as
14 attorney-in-fact upon whom notices or orders of the
15 commissioner or process affecting such rating organiza-
16 tion may be served and (4) a statement of its qualifica-
17 tions as a rating organization. If the commissioner finds
18 that the applicant is competent, trustworthy and
19 otherwise qualified to act as a rating organization and
20 that its constitution, articles of agreement or association
21 or certificate of incorporation, and its bylaws, rules and
22 regulations governing the conduct of its business
23 conform to the requirements of law, he shall issue a
24 license specifying the kinds of insurance or subdivisions
25 thereof for which the applicant is authorized to act as
26 a rating organization. Every application shall be
27 granted or denied in whole or in part by the commis-
28 sioner within sixty days of the date of its filing with him.
29 Licenses issued pursuant to this section shall remain in
30 effect for three years unless sooner suspended or
31 revoked by the commissioner. The fee for the license
32 shall be one hundred dollars, and the fee shall be in lieu
33 of all other fees, licenses or taxes to which a rating
34 organization might otherwise be subject, all fees so
35 collected to be used for the purposes specified in section
36 thirteen, article three of this chapter. Licenses issued
37 pursuant to this section may be suspended or revoked

38 by the commissioner, after notice and hearing, in the
39 event the rating organization ceases to meet the
40 requirements of this article. Every rating organization
41 shall notify the commissioner promptly of every change
42 in (1) its constitution, its articles of agreement or
43 association or its certificate of incorporation, and its
44 bylaws, rules and regulations governing the conduct of
45 its business, (2) its list of members and subscribers and
46 (3) the name and address of the resident of this state
47 designated as attorney-in-fact by it upon whom notices
48 or orders of the commissioner or process affecting such
49 rating organization may be served.

50 (b) Subject to rules and regulations which have been
51 approved by the commissioner as reasonable, each
52 rating organization shall permit any insurer, not a
53 member, to be a subscriber to its rating services for any
54 kind of casualty insurance or subdivision thereof, or for
55 any kind of fire and marine insurance or subdivision or
56 class of risk or a part or combination thereof, or any
57 kind of surety insurance or subdivision thereof, for
58 which it is authorized to act as a rating organization.
59 Notice of proposed changes in such rules and regulations
60 shall be given to subscribers. Each rating organization
61 shall furnish its rating services without discrimination
62 to its members and subscribers. The reasonableness of
63 any rule or regulation in its application to subscribers,
64 or the refusal of any rating organization to admit an
65 insurer as a subscriber, shall, at the request of any
66 subscriber or any such insurer, be reviewed by the
67 commissioner. If, after notice and hearing, the commis-
68 sioner finds that the rule or regulation is unreasonable
69 in its application to subscribers, he shall order that the
70 rule or regulation shall not be applicable to subscribers.
71 If the rating organization fails to grant or reject an
72 insurer's application for subscribership within thirty
73 days after it was made, the insurer may request a
74 review by the commissioner as if the application had
75 been rejected. If, after notice and hearing, the commis-
76 sioner finds that the insurer has been refused admit-
77 tance to the rating organization as a subscriber without
78 justification, he shall order the rating organization to
79 admit the insurer as a subscriber. If he finds that the

80 action of the rating organization was justified, he shall
81 make an order affirming its action.

82 (c) No rating organization shall adopt any rule the
83 effect of which would be to prohibit or regulate the
84 payment of dividends, savings or unabsorbed premium
85 deposits allowed or returned by insurers to their
86 policyholders, members or subscribers.

87 (d) Cooperation among rating organizations or among
88 rating organizations and insurers in rate making or in
89 other matters within the scope of this article is hereby
90 authorized, provided the filings resulting from such
91 cooperation are subject to all the provisions of this
92 article which are applicable to filings generally. The
93 commissioner may review such cooperative activities
94 and practices, and if after a hearing he finds that any
95 such activity or practice is unfair or unreasonable or
96 otherwise inconsistent with the provisions of this article,
97 he may issue a written order specifying in what respects
98 such activity or practice is unfair or unreasonable or
99 otherwise inconsistent with the provisions of this article,
100 and requiring the discontinuance of such activity or
101 practice.

102 (e) Any rating organization for casualty, marine or
103 surety insurance may provide for the examination of
104 policies, daily reports, binders, renewal certificates,
105 endorsements or other evidences of insurance, or the
106 cancellation thereof, and may make reasonable rules
107 governing their submission. The rules shall contain a
108 provision that in the event any insurer does not within
109 sixty days furnish satisfactory evidence to the rating
110 organization of the correction of any error or omission
111 previously called to its attention by the rating organi-
112 zation, it shall be the duty of the rating organization to
113 notify the commissioner thereof. All information so
114 submitted for examination shall be confidential. Such
115 services for fire insurance shall be governed by the
116 provisions of section ten, article seventeen of this
117 chapter.

118 (f) Any rating organization may subscribe for or
119 purchase actuarial, technical or other services, and these

120 services shall be available to all members and subscrib-
121 ers without discrimination.

ARTICLE 21. RECIPROCAL INSURERS.

§33-21-12. Process and venue; annual fee.

1 (a) Concurrently with the filing of the application
2 provided for by the terms of section six of this article,
3 the attorney shall file with the commissioner an
4 instrument in writing, executed by him for said
5 subscribers, conditioned that upon the issuance of the
6 license provided for in section seven of this article any
7 action, suit or other proceeding arising out of any
8 insurance contract or policy issued under such license,
9 may be brought in the county of this state wherein the
10 property insured was situated either at the date of the
11 policy or at the time when the right of action accrued,
12 or in the county of this state wherein the person insured
13 had a legal residence at the date of his death or at the
14 time the right of action accrued, and that service of any
15 process or notice may be had upon the secretary of state
16 in all actions, suits or other proceedings in this state
17 arising out of such policies, contracts, agreements or
18 other business of insurance transacted under such
19 license, and that said secretary of state may accept
20 service of any such process or notice.

21 (b) Such service or acceptance of service shall be valid
22 and binding upon the attorney and upon all subscribers
23 exchanging at any time reciprocal or interinsurance
24 contracts through the attorney. Two copies of such
25 process or notice, in addition to the original, shall be
26 furnished the secretary of state, and he shall file one
27 copy, forward one copy to the attorney and return the
28 original with his acceptance of service or for return of
29 service. But no process or notice shall be served on the
30 secretary of state or accepted by him less than ten days
31 before the return day thereof. Where the principal office
32 of the attorney is located in this state, service of process
33 may be had upon all subscribers by serving same upon
34 the attorney at said office. Service of process shall not
35 be had upon said subscribers or any of them in any suit
36 or other proceeding in this state except in the manner

37 provided in this section, and any action, suit, or other
38 proceeding may be begun and prosecuted against or
39 defended by them under the name or designation
40 adopted by them.

41 (c) The attorney shall pay to the secretary of state an
42 annual fee of twenty dollars.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Other provisions of chapter applicable.

§33-22-16. Fees.

§33-22-2. Other provisions of chapter applicable.

1 Each such company to the same extent such provisions
2 are applicable to domestic mutual insurers shall be
3 governed by and be subject to the following articles of
4 this chapter: Article one (definitions), article two
5 (insurance commissioner), article four (general provi-
6 sions) except that section sixteen of article four shall not
7 be applicable thereto, article ten (rehabilitation and
8 liquidation) except that under the provisions of section
9 thirty-two of said article ten no assessment shall be
10 levied against any former member of a farmers' mutual
11 fire insurance company who is no longer a member of
12 the company at the time the order to show cause was
13 issued, article eleven (unfair practices and frauds),
14 article twelve (agents, brokers and solicitors) except that
15 the agents' license fee shall be five dollars, article
16 twenty-six (West Virginia Insurance Guaranty Associ-
17 ation Act) and article thirty (mine subsidence insurance)
18 except that under the provisions of section six, article
19 thirty, a farmers' mutual insurance company shall have
20 the option of offering mine subsidence coverage to all
21 of its policyholders but shall not be required to do so;
22 but only to the extent these provisions are not inconsis-
23 tent with the provisions of this article.

§33-22-16. Fees.

1 Such company at the time of making its annual report
2 shall pay to the commissioner a filing fee of twenty-five
3 dollars, all fees so collected to be used for the purposes
4 specified in section thirteen, article three of this chapter.

5 No other fees or taxes shall be levied against such
 6 companies except the agent's license fee and the
 7 expenses of examination thereof by the commissioner.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-29. Fees; exemption of funds and assets from taxation.

1 (a) Each society shall pay to the commissioner an
 2 annual license fee of fifty dollars and a fee of twenty-
 3 five dollars for filing the annual statement of the society,
 4 all fees so collected to be used for the purposes specified
 5 in section thirteen, article three of this chapter.

6 (b) Every society licensed under this article is hereby
 7 declared to be a charitable and benevolent institution,
 8 and all of its funds and assets shall be exempt from all
 9 state, county, district and municipal taxes except taxes
 10 on real property and office equipment.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
 SERVICE CORPORATIONS AND DENTAL SER-
 VICE CORPORATIONS.**

§33-24-4. Exemptions; applicability of other laws.

§33-24-5. Licenses; name of corporation.

§33-24-4. Exemptions; applicability of other laws.

1 Every such corporation is hereby declared to be a
 2 scientific, nonprofit institution and as such exempt from
 3 the payment of all property and other taxes. Every such
 4 corporation, to the same extent such provisions are
 5 applicable to insurers transacting similar kinds of
 6 insurance and not inconsistent with the provisions of this
 7 article, shall be governed by and be subject to the
 8 provisions, as hereinbelow indicated, of the following
 9 articles of this chapter: Article two (insurance commis-
 10 sioner) except that under section nine of article two
 11 examinations shall be conducted at least once every four
 12 years, article four (general provisions) except that
 13 section sixteen of article four shall not be applicable
 14 thereto, article ten (rehabilitation and liquidation),
 15 article eleven (unfair practices and frauds), article
 16 twelve (agents, brokers and solicitors) except that the
 17 agent's license fee shall be five dollars, section three-c,

18 article sixteen (group accident and sickness insurance),
19 section three-d, article sixteen (medicare supplement)
20 and article twenty-eight (individual accident and
21 sickness insurance minimum standards); and no other
22 provision of this chapter shall apply to such corporations
23 unless specifically made applicable by the provisions of
24 this article. If, however, any such corporation shall be
25 converted into a corporation organized for a pecuniary
26 profit, or if it shall transact business without having
27 obtained a license as required by section five of this
28 article, it shall thereupon forfeit its right to these
29 exemptions.

§33-24-5. Licenses; name of corporation.

1 (a) No such corporation shall enter into any contract
2 with a subscriber until it has obtained from the
3 commissioner a license as provided in this section.
4 Application for a license shall be made on forms to be
5 prescribed and furnished by the commissioner.

6 (b) The application shall be accompanied by a copy of
7 the following documents: (1) Certificate of incorporation;
8 (2) bylaws; (3) contracts between the corporation and
9 participating hospitals, physicians, dentists or other
10 health agencies; (4) proposed contracts to be issued to
11 subscribers, setting forth the hospital, medical or dental
12 service, to which subscribers are entitled, and the table
13 of rates to be charged for such service; and (5) financial
14 statement showing the amount of contributions paid, or
15 agreed to be paid, to the corporation for working capital,
16 the name or names of each contributor and the terms
17 of each contribution.

18 (c) Within thirty days after receipt of an application,
19 the commissioner shall, upon payment to him of a
20 license fee of two hundred dollars, issue a license
21 authorizing the corporation to transact business in this
22 state in the area to be served by it, if he is satisfied (1)
23 that the applicant is incorporated in this state under the
24 provisions of article one, chapter thirty-one of this code,
25 as a bona fide nonprofit corporation, (2) that the
26 contracts between the corporation and participating
27 hospitals, physicians, dentists and other health agencies

28 contain all the terms required by section seven of this
29 article, (3) that the working capital available to the
30 corporation will be sufficient to pay all operating
31 expenses, other than payment for hospital, medical or
32 dental services, for a reasonable period after the
33 issuance of the license, and (4) that the proposed plan
34 will serve the best interests of all of the people of the
35 area in which the corporation intends to operate,
36 regardless of their race, color or economic status. Any
37 license so issued may be renewed annually upon
38 payment to the commissioner of a renewal fee of two
39 hundred dollars.

40 (d) The term of such license, renewal, refusal to
41 license, revocation, suspension or penalty in lieu thereof,
42 shall be governed by the provisions of sections eight,
43 nine, ten and eleven, article three of this chapter, in the
44 same manner that these sections are applicable to
45 insurers generally.

46 (e) No such corporation shall include in its name the
47 words "insurance," "casualty," "surety," "health and
48 accident," "accident and sickness," "mutual," or any
49 other words descriptive of the insurance business; nor
50 shall its name be so similar to that of any insurer which
51 was licensed to transact insurance in this state when
52 such corporation was formed, as to tend, in the opinion
53 of the commissioner, to confuse the public.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-7. Licenses.

1 (a) Before it may issue any contract to a subscriber,
2 a corporation desiring to establish, maintain and operate
3 a direct health care plan must first obtain from the
4 commissioner a license as provided in this section.

5 (b) Applications for an original license shall be made
6 on forms prescribed and furnished by the commissioner
7 and shall be accompanied by the following documents
8 and information: (1) Certificate of incorporation; (2)
9 bylaws; (3) list of names and residence addresses of all
10 officers and board of directors of the corporation; (4)
11 contracts between the corporation and persons, firms,

12 corporations or associations to render direct health care
13 services; (5) proposed contracts to be issued to subscrib-
14 ers setting forth in detail the direct health care services
15 to which subscribers are entitled and the table of rates
16 to be charged for such services; (6) financial statement
17 showing the assets and liabilities of the corporation, the
18 amount of contributions paid, or agreed to be paid, to
19 the corporation for working capital, the names or name
20 of each contributor and the terms of each contribution;
21 and (7) any additional information as the commissioner
22 may require.

23 (c) Within thirty days after receipt of an application,
24 the commissioner shall, upon payment to him of a
25 license fee of two hundred dollars, issue a license
26 authorizing the corporation to transact business in this
27 state in the area to be served by it, if he is satisfied (1)
28 that the applicant is incorporated in this state under the
29 provisions of article one, chapter thirty-one of the code
30 of West Virginia as a bona fide, nonprofit corporation,
31 (2) that the health care plan which the corporation
32 proposes to operate, as well as the forms of all contracts
33 which it proposes to issue under such health care plan,
34 are based upon sound business principles and will be in
35 every respect equitable, just and fair to the subscriber,
36 (3) that the working capital available to the corporation
37 will be sufficient to pay all operating expenses during
38 the subscription period, and (4) that the proposed plan
39 will adequately serve the best interests of all the people
40 of the area in which the corporation intends to operate,
41 regardless of their race, color or religion.

42 (d) The commissioner may refuse to license a corpo-
43 ration when he determines that such corporation has not
44 complied with the laws of this state, or that it is not in
45 the best interest of the people of the state that such
46 corporation be licensed, or that such corporation would
47 transact business in this state in an improper, illegal or
48 unjust manner. In such event, the commissioner shall
49 enter an order refusing the license and the applicant
50 therefor may have a hearing and judicial review in
51 accordance with the applicable provisions of article two
52 of this chapter relating to hearings before and judicial

53 review of orders entered by the commissioner.

54 (e) All licenses issued under the provisions of this
55 article shall expire at midnight on the thirty-first day
56 of March next following the date of issuance. The
57 commissioner shall renew annually the license of all
58 corporations which qualify and make applications
59 therefor upon a form prescribed by the commissioner
60 upon payment to the commissioner of a renewal fee of
61 two hundred dollars.

62 (f) The commissioner shall, after notice and hearing,
63 refuse to renew or shall revoke or suspend the license
64 of a corporation, if the corporation: (1) Violates any
65 provision of this article; (2) fails to comply with any
66 lawful rule, regulation or order of the commissioner; (3)
67 is transacting its business in an illegal, improper or
68 unjust manner, or is operating in contravention of its
69 articles of incorporation or any amendments thereto, of
70 its bylaws, or of its health care plan; (4) is found by the
71 commissioner to be in an unsound condition or in such
72 condition as to jeopardize its obligations to subscribers
73 and those with whom it has contracted; (5) compels
74 subscribers to its health care program to accept less
75 than the obligation due them under their contracts or
76 agreements with the corporation; (6) refuses to be
77 examined or to produce its accounts, records and files
78 for examination by the commissioner when required; (7)
79 fails to pay any final judgment rendered against it in
80 West Virginia within thirty days after the judgment
81 became final or time for appeal expired, whichever is
82 later; (8) fails to pay when due to the state of West
83 Virginia any fees, charges or penalties required by this
84 chapter.

85 In those cases where the commissioner has the right
86 to revoke, suspend or terminate the license or any
87 renewal thereof of said corporation, the commissioner
88 shall, by order, require the corporation to pay to the
89 state of West Virginia a penalty in the sum not
90 exceeding one thousand dollars, and on the failure of the
91 corporation to pay the penalty within thirty days after
92 notice thereof, the commissioner shall revoke or suspend
93 the license of the corporation.

94 When any license has been revoked, suspended or
95 terminated, the commissioner may reinstate the license
96 when he is satisfied that the conditions causing the
97 revocation, suspension or termination have ceased to
98 exist and are unlikely to recur.

99 In the event the commissioner revokes, suspends or
100 terminates a license, the corporation may demand a
101 hearing in the manner provided in article two of this
102 chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-22. Fees.

1 Every health maintenance organization subject to this
2 article shall pay to the commissioner the following fees:
3 For filing an application for a certificate of authority
4 or amendment thereto, two hundred dollars; and for
5 filing each annual report, twenty-five dollars. Fees
6 charged under this section shall be for the purposes set
7 forth in section thirteen, article three of this chapter.

CHAPTER 90

(Com. Sub. for H. B. 1838—By Delegate Moore and Delegate McNeely)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six, chapter forty-four of said code, all relating to authorizing investments in the African Development Bank by insurers and fiduciaries.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight, chapter thirty-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, chapter forty-four of said code be amended and reenacted, all to read as follows:

Chapter**33. Insurance.****44. Administration of Estates and Trusts.****CHAPTER 33. INSURANCE.****ARTICLE 8. INVESTMENTS.****§33-8-12. Insured building and savings and loan shares; obligations of International Bank, Asian Development Bank or African Development Bank.**

1 Subject to the limits set forth in sections five and six
2 of this article, an insurer may invest in shares of insured
3 state chartered building and loan associations and
4 federal savings and loan associations, if such shares are
5 insured by the federal savings and loan insurance
6 corporation and may invest in obligations issued or
7 guaranteed by the "International Bank for Reconstruc-
8 tion and Development" or by the "Asian Development
9 Bank" or the "African Development Bank."

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**ARTICLE 6. INVESTMENTS BY FIDUCIARIES.****§44-6-2. In what securities fiduciaries may invest trust funds.**

1 Any executor, administrator, guardian, curator,
2 committee, trustee or other fiduciary whose duty it may
3 be to loan or invest money entrusted to him as such,
4 may, without any order of any court, invest the same or
5 any part thereof in any of the following securities, and
6 without liability for any loss resulting from investments
7 therein: *Provided*, That such fiduciary shall exercise the
8 judgment and care under the circumstances then
9 prevailing which men of prudence, discretion and
10 intelligence exercise in the management of their own
11 affairs, not in regard to speculation, but in regard to the
12 permanent disposition of their funds, considering the
13 probable income as well as the probable safety of their
14 capital:

15 (a) In bonds or interest-bearing notes or obligations of

16 the United States, or those for which the faith of the
17 United States is distinctly pledged to provide for the
18 payment of the principal and interest thereof, including,
19 but not by way of limitation, bonds or debentures issued
20 under the "Federal Farm Loan Act," debentures issued
21 by "Banks for Cooperatives" under the "Farm Credit
22 Act of One Thousand Nine Hundred Thirty-Three," as
23 amended, debentures issued by the federal national
24 mortgage association, securities issued by the federal
25 home loan bank system; and in bonds, interest-bearing
26 notes and obligations issued, guaranteed or assumed by
27 the "International Bank for Reconstruction and Devel-
28 opment" or by the "Inter-American Development Bank"
29 or by the "Asian Development Bank" or by the "African
30 Development Bank";

31 (b) In bonds or interest-bearing notes or obligations of
32 this state;

33 (c) In bonds of any state of the United States which
34 has not within ten years previous to the making of such
35 investment defaulted in the payment of any part of
36 either principal or interest on any of its bonds issued by
37 authority of the legislature of such state;

38 (d) In the bonds or interest-bearing notes or obliga-
39 tions of any county, district, school district or independ-
40 ent school district, municipality or any other political
41 division of this state that have been issued pursuant to
42 the authority of any law of this state, since the ninth day
43 of May of the year one thousand nine hundred seventeen;

44 (e) In bonds and negotiable notes secured by first
45 mortgage or first trust deed upon improved real estate
46 where the amount secured by such mortgage or trust
47 deed shall not at the time of making the same exceed
48 eighty percent of the assessed value, or sixty-six and
49 two-thirds percent of the appraised value as determined
50 by wholly disinterested and independent appraisers,
51 whichever value shall be the higher, of the real estate
52 covered by such mortgage or trust deed, and when such
53 mortgage or trust deed is accompanied by a satisfactory
54 abstract of title, certificate of title or title insurance
55 policy, showing good title in the mortgager when

56 making such mortgage or trust deed, and by a fire
57 insurance policy in an old line company with loss, if any,
58 payable to the mortgagee or trustee as his interest may
59 appear: *Provided*, That the rate of interest upon the
60 above enumerated securities in this subdivision (e), in
61 which such investments may be made, shall not be less
62 than three and one-half percent per annum nor greater
63 than the maximum rate of interest which such bonds
64 or negotiable notes may bear under applicable law:
65 *Provided, however*, That the provisions herein establish-
66 ing a minimum rate of interest shall not apply to
67 investments in force as of the effective date of this
68 section;

69 (f) In savings accounts and time deposits of bank or
70 trust companies to the extent that such deposits are
71 insured by the federal deposit insurance corporation, or
72 by any other similar federal instrumentality that may
73 be hereafter created, provided there shall be such an
74 instrumentality in existence and available for the
75 purpose, or by bonds of solvent surety companies:
76 *Provided*, That the rate of interest upon such savings
77 accounts or time deposits shall not be less than the rate
78 paid other depositors in such bank or trust company;

79 (g) In shares of state building and loan associations,
80 or federal savings and loan associations, to the extent
81 that such shares are insured by the federal savings and
82 loan insurance corporation, or by any other similar
83 federal instrumentality that may be hereafter created:
84 *Provided*, That there shall be such an instrumentality
85 in existence and available for the purpose, or by bonds
86 of solvent surety companies: *Provided, however*, That the
87 dividend rate upon such shares shall not be less than the
88 rate paid to other shareholders in such association;

89 (h) In other securities of corporations organized and
90 existing under the laws of the United States, or of the
91 District of Columbia or any state of the United States,
92 including, but not by way of limitation, bonds, deben-
93 tures, notes, equipment trust obligations or other
94 evidences of indebtedness, and shares of common and
95 preferred stocks of such corporations and securities of
96 any open end or closed end management type invest-

97 ment company or investment trust registered under the
98 "Federal Investment Company Act" of one thousand
99 nine hundred forty, as from time to time amended,
100 which men of prudence, discretion and intelligence
101 acquire or retain for their own account, provided, and
102 upon conditions, however, that:

103 (1) No investment shall be made pursuant to the
104 provisions of this subdivision (h) which, at the time such
105 investment shall be made, will cause the aggregate
106 market value thereof to exceed fifty percent of the
107 aggregate market value at that time of all of the
108 property of the fund held by such fiduciary. Notwith-
109 standing the aforesaid percentage limitation the cash
110 proceeds of the sale of securities received or purchased
111 by a fiduciary and made eligible by this subdivision (h)
112 may be reinvested in any securities of the type described
113 in this subdivision (h).

114 (2) No bonds, debentures, notes, equipment trust
115 obligations or other evidence of indebtedness of such
116 corporations shall be purchased under authority of this
117 subdivision (h) unless such obligations, if other than
118 issues of a common carrier subject to the provisions of
119 section twenty-a of the "Interstate Commerce Act," as
120 amended, shall be obligations issued, guaranteed or
121 assumed by corporations which have any securities
122 currently registered with the securities and exchange
123 commission.

124 (3) No common or preferred stocks, other than bank
125 and insurance company stocks, shall be purchased under
126 authority of this subdivision (h) unless currently fully
127 listed and registered upon an exchange registered with
128 the securities and exchange commission as a national
129 securities exchange. No sale or other liquidation of any
130 investment shall be required solely because of any
131 change in the relative market value of those investments
132 made eligible by this subdivision (h) and those made
133 eligible by the preceding subdivisions of this section. In
134 determining the aggregate market value of the property
135 of a fund and the percentage of a fund to be invested
136 under the provisions of this subdivision, a fiduciary may
137 rely upon published market quotations as to those

138 investments for which such quotations are available, and
139 upon such valuations of other investments as in the
140 fiduciary's best judgment seem fair and reasonable
141 according to available information.

142 Trust funds received by executors, administrators,
143 guardians, curators, committees, trustees and other
144 fiduciaries may be kept invested in the securities
145 originally received by them, or if the trust funds
146 originally received were stock or securities of a bank,
147 in shares of stock or other securities (and securities
148 received as distributions in respect thereof) of a holding
149 company subject to the Federal Bank Holding Company
150 Act of 1956, as amended, received upon conversion of,
151 or in exchange for, shares of stock or other securities
152 of such bank; unless otherwise ordered by a court having
153 jurisdiction of the matter, as hereinafter provided, or
154 unless the instrument under which the trust was created
155 shall direct that a change of investment be made, and
156 any such fiduciary shall not be liable for any loss that
157 may occur by depreciation of such securities.

158 This section shall not apply where the instrument
159 creating the trust, or the last will and testament of any
160 testator, or any court having jurisdiction of the matter,
161 specially directs in what securities the trust funds shall
162 be invested, and every such court is hereby given power
163 specially to direct by order or orders, from time to time,
164 additional securities in which trust funds may be
165 invested, and any investment thereof made in accor-
166 dance with any such special direction shall be legal, and
167 no executor, administrator, guardian, curator, commit-
168 tee, trustee or other fiduciary shall be held for any loss
169 resulting in any such case.

CHAPTER 91

(Com. Sub. for S. B. 200—By Mr. Tonkovich, Mr. President, Senators Karras,
Whitacre, Jones, Chernenko and Shaw)

[Passed March 6, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter thirty-three of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to reduced automobile insurance premiums for persons fifty-five years of age or older.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-18. Reduction of premium charges for persons fifty-five years of age or older.

1 (a) Any rates, rating schedules, or rating manuals for
2 the liability, personal injury protection and collision cov-
3 erages of a motor vehicle insurance policy submitted to
4 or filed with the insurance commissioner shall provide for
5 an appropriate reduction in premium charges as to such
6 coverages when the principal operator and spouse on the
7 covered vehicle is an insured who is fifty-five years of age
8 or older and who has successfully completed a motor
9 vehicle accident prevention course approved by the de-
10 partment of motor vehicles. Such reductions of premium
11 rates shall be made in compliance with the provisions of
12 subsections (a) and (b), section three of this article. Any
13 discount used by an insurer shall be presumed appropriate
14 unless credible data demonstrates otherwise.

15 (b) The premium reduction required by this section
16 shall be effective for an insured and spouse for a three-
17 year period after successful completion of the approved
18 course, except that the insurer may require, as a condition
19 of maintaining the discount, that the insured and spouse:

20 (1) Not be involved in an accident for which the in-
21 sured or spouse is at fault;

22 (2) Not be convicted, plead guilty or nolo contendere
23 to a moving traffic violation, or to a traffic related alcohol
24 or narcotics offense; and

25 (3) Have maintained a driving record free of violations

26 and liability for accidents for a three-year period prior to
27 course completion.

28 (c) Upon successfully completing the approved course,
29 each person shall be issued a certificate by the organiza-
30 tion offering the course which shall be used to qualify for
31 the premium discount required by this section.

32 (d) This section shall not apply in the event the ap-
33 proved course is taken as punishment specified by a court
34 or other governmental entity resulting from a moving
35 traffic violation.

36 (e) This reduction in premium charges shall not apply
37 to insurers already giving a reduction in premium charges
38 to persons fifty-five years of age or older which is equal
39 to or greater than the reduction approved by the commis-
40 sioner.

41 (f) Each participant shall take an approved course
42 every three years to continue to be eligible for the reduc-
43 tion in premiums.

CHAPTER 92

(H. B. 1592—By Delegate White and Delegate Riffle)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to the publication by the insurance commissioner of automobile insurance premium rates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-19. Publication of automobile insurance rates.

1 Annually, during the first quarter of each year, the
 2 commissioner shall publish a list of the current pre-
 3 mium rates for minimum automobile liability insurance
 4 as required under the provisions of section two, article
 5 four, chapter seventeen-d of this code. The list shall
 6 contain the names of all insurers that are licensed by
 7 the commissioner to sell such insurance in this state and
 8 shall be presented in such a manner so as to demonstrate
 9 to the public an accurate comparison of the rates
 10 charged by each company for the same insurance
 11 coverage.

12 This list shall be made available to the public through
 13 the tax division of the sheriff's department and public
 14 libraries in each of the fifty-five counties.

CHAPTER 93

(Com. Sub. for S. B. 565—By Mr. Tonkovich, Mr. President, and Senator Harman)

[Passed March 7, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-a, relating to insurance; the West Virginia essential insurance coverage act of 1986; purposes; West Virginia essential insurance association; board of directors; general powers; powers of commissioner and association; immunity from liability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20A. WEST VIRGINIA ESSENTIAL INSURANCE COVERAGE ACT.

§33-20A-1. Short title.

- §33-20A-2. Intent and purpose.
- §33-20A-3. West Virginia essential insurance association.
- §33-20A-4. Board of directors.
- §33-20A-5. General powers.
- §33-20A-6. Powers of commissioner and association.
- §33-20A-7. Immunity from liability.

§33-20A-1. Short title.

- 1 This article shall be known and may be cited as the “West
- 2 Virginia Essential Insurance Coverage Act.”

§33-20A-2. Intent and purpose.

- 1 To provide for a mechanism whereby the commissioner
- 2 may establish insurance plans to make available insurance
- 3 coverages to persons who do not have coverages available to
- 4 them in the voluntary insurance market.

§33-20A-3. West Virginia essential insurance association.

- 1 (a) The commissioner shall establish a nonprofit
- 2 unincorporated legal entity to be known as the West
- 3 Virginia essential insurance association to make fire and
- 4 extended coverage insurance available to any person
- 5 having an insurable interest in habitational or commercial
- 6 property situated in this state who is equitably entitled to
- 7 but unable to secure such insurance in the voluntary
- 8 insurance market. Participation shall be required of all
- 9 insurers doing any insurance business in this state of the
- 10 kinds covered by the association as a condition of their
- 11 authority to transact insurance in this state.
- 12 (b) The association shall perform its functions under a
- 13 plan of operation established by regulation promulgated by
- 14 the commissioner pursuant to chapter twenty-nine-a,
- 15 article three of this code.
- 16 (c) If the commissioner finds after a public hearing that
- 17 in any part of this state any other kind of essential insurance
- 18 coverage is not readily available in the voluntary insurance
- 19 market and that the public interest requires such
- 20 availability, he may by regulation promulgate plans to
- 21 provide such coverage through the association for any risks
- 22 in this state which are equitably entitled to but unable to
- 23 secure such insurance in the voluntary insurance market.
- 24 Participation shall be required of all insurers doing any
- 25 insurance business in this state of the kinds covered by the

26 association as a condition of their authority to transact
27 insurance in this state.

§33-20A-4. Board of directors.

1 (a) The administrative powers of the association shall
2 be vested in a board of directors consisting of not less than
3 five nor more than nine members serving terms as
4 established in the plan of operation. The members of the
5 board shall be appointed by the commissioner with due
6 consideration given to the composition of the membership
7 of the association and to the interests of the insured who are
8 provided essential insurance coverage by the association.

9 (b) Members of the board may be reimbursed from the
10 assets of the association for expenses incurred by them as
11 members of the board of directors and for reasonable and
12 equitable compensation as may be prescribed by the terms
13 of the plan of organization.

14 (c) The board of directors of the association shall submit
15 to the commissioner a plan of organization for the
16 association and make suitable or necessary amendments
17 thereto to assure the fair, reasonable and equitable
18 administration of the association. The plan of organization
19 shall become effective upon approval in writing by the
20 commissioner.

21 (d) If the association fails to submit a suitable plan of
22 organization within a reasonable period of time, or if at any
23 time thereafter the association fails to submit suitable
24 amendments to the plan, the commissioner shall
25 promulgate a plan as necessary or advisable to effectuate
26 the provisions of this article.

§33-20A-5. General powers.

1 (a) The association has, for purposes of this article and
2 to the extent approved by the commissioner, the general
3 powers and authority granted under the laws of this state to
4 insurers licensed to transact the kinds of insurance as
5 defined in chapter thirty-three, article one of this code.

6 (b) The association may take any necessary action to
7 make available necessary insurance including, but not
8 limited to, the following:

9 (1) Assess participating insurers amounts necessary to
10 pay the obligations of the association, administration
11 expenses, the cost of examinations and other expenses

12 authorized under this article. The assessment of each
13 member insurer for the kind or kinds of insurance
14 designated in the plan shall be in the proportion that the net
15 direct written premiums of the member insurer for the
16 preceding calendar year bear to the net direct written
17 premiums of all members for the preceding calendar year. A
18 member insurer may not be assessed in any year an amount
19 greater than five percent of his net direct written premiums
20 for the preceding calendar year. Each member insurer shall
21 be allowed a premium tax credit at the rate of twenty
22 percent per year for five successive years following
23 termination of the association.

24 (2) Enter into such contracts as are necessary or proper
25 to carry out the provisions and purposes of the provisions of
26 this article.

27 (3) Sue or be sued, including taking legal action
28 necessary to recover any assessments for, on behalf of, or
29 against participant insurers.

30 (4) Investigate claims brought against the fund and
31 adjust, compromise, settle and pay covered claims to the
32 extent of the association's obligation and deny all other
33 claims. Claims may be processed through the association's
34 employees or through one or more member insurers or other
35 persons designated as servicing facilities. Designation of a
36 service facility is subject to the approval of the
37 commissioner, but such designation may be declined by a
38 member insurer.

39 (5) Classify risks as may be applicable and equitable.

40 (6) Establish appropriate rates, rate classifications and
41 rating adjustments, and file such rates with the
42 commissioner as may be required. Rates, rating plans and
43 any provision for recoupment shall be based upon the
44 association's loss and expense experience and investment
45 income from unearned premium and loss reserves. Premium
46 rates, including initial premiums, shall be on an actuarially
47 sound basis and shall be calculated to be self-supporting.

48 (7) Administer any type of reinsurance program for or
49 on behalf of the association or any participating carriers.

50 (8) Pool risks among participating carriers.

51 (9) Issue and market through agents, policies of
52 insurance providing coverage required by this article in its
53 own name or on behalf of participating carriers.

54 (10) Administer separate pools, separate accounts, or
55 other plans as may be deemed appropriate for separate
56 carriers or groups of carriers.

57 (11) Invest, reinvest and administer all funds and
58 moneys held by the association.

59 (12) Borrow funds needed by the association to effect
60 the purposes of this section.

61 (13) Develop, effectuate and promulgate any loss
62 prevention programs aimed at the best interests of the
63 association and the insured public.

64 (14) Operate and administer any combination of plans,
65 pools, reinsurance arrangements or other mechanisms as
66 deemed appropriate to best accomplish the fair and
67 equitable operation of the association for the purposes of
68 making available essential insurance coverage.

69 (15) Provide for the method of recoupment of deficits
70 that may be incurred by any plan pursuant to the plan of
71 operation. In no event shall a deficit incurred by the
72 association be charged directly or indirectly to any person
73 other than insureds under its fire and extended coverage or
74 essential insurance policy.

§33-20A-6. Powers of commissioner and association.

1 The commissioner and the association may:

2 (a) Give consideration to the need for adequate and
3 readily accessible coverage, to alternative methods of
4 improving the market affected, to the preferences of the
5 insurers and agents, to the inherent limitations of the
6 insurance mechanism, to the need for reasonable under-
7 writing standards, and to the requirement of reasonable
8 loss prevention measures.

9 (b) Establish procedures that will create minimum
10 interference with the voluntary market.

11 (c) Spread the burden imposed by the facility equitably
12 and efficiently.

13 (d) Establish procedures for applicants and
14 participants to have grievances reviewed.

15 (e) Take all reasonable and necessary steps to dissolve
16 the association at the earliest date when essential insurance
17 becomes readily available in the private market. The
18 dissolution of the association, including its assets and
19 liabilities, shall be accomplished under the supervision of
20 the commissioner in an equitable and reasonable manner.

§33-20A-7. Immunity from liability.

1 There is no liability on the part of, and no cause of action
2 of any nature against, the association or its agents or
3 employees, members of the board, or the commissioner or
4 his representatives for any good faith performance of their
5 powers and duties under this article.

CHAPTER 94

(Com. Sub. for H. B. 1214—By Delegate Chambers and Delegate Casey)

[Passed March 7, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to repeal section eleven, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article one, chapter fifty-two; to amend and reenact sections two, three, four and thirteen, article two of said chapter fifty-two; and to amend and reenact section one, article three of said chapter, all relating to selecting petit and grand jurors at random; declaration of policy; prohibition of discrimination; definitions; establishment of jury commissions; removal of jury commissioners; oath; master lists; jury boxes and jury wheels; random selection of names from master list for jury wheel or jury box; drawing of jury panels and qualification of jurors; juror qualification form; penalty for misrepresentation of qualification facts; penalty for failure to complete and return juror qualification form; penalty for failure to appear; disqualification from jury service; assignment of jurors to jury panels; drawing of additional jurors upon shortage of qualified jurors; elimination of exemptions; excuses from jury services; discharge of excess jurors; competency of jurors when municipality, county or district is a party in interest; summoning jurors from other counties; challenging compliance with selection procedures and relief; preservation of records and duty to report information; payment of mileage and compensation of jurors; taxing jury cost; when jurors not entitled to compensation; record of allowance to jurors; certification to auditor; failure of clerk to comply with provisions and penalty; payment of compensation; failure of sheriff to pay and penalty; excuse from employment; fraud in selection of jurors and penalty; length of jury service; penalty for

failure to perform as a juror; retention of present method of jury selection until master list is prepared; application of article to magistrate jury selection; application of article one to grand jury selection; selecting and summoning grand jurors; quorum; additional grand jurors; compensation and mileage of grand jurors; discrimination for jury service; attorney fees; and penalty.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Petit Juries.
2. Grand Juries.
3. Discrimination for Jury Service.

ARTICLE 1. PETIT JURIES.

- §52-1-1. Declaration of policy.
- §52-1-2. Prohibition of discrimination.
- §52-1-3. Definitions.
- §52-1-4. Jury commission.
- §52-1-5. Master list.
- §52-1-6. Jury wheel or jury box; random selection of names from master list for jury wheel or jury box.
- §52-1-7. Drawings from the jury wheel or jury box; notice of jury duty; juror qualification forms; penalties.
- §52-1-8. Disqualifications from jury service.
- §52-1-9. Assignment of jurors to jury panels; drawing of additional jurors upon shortage of qualified jurors.
- §52-1-10. No exemptions.
- §52-1-11. Excuses from jury service.
- §52-1-12. Discharge of excess jurors.
- §52-1-13. Competency of jurors when municipality, county or district is a party.
- §52-1-14. When and how jurors are to be summoned from other county.
- §52-1-15. Challenging compliance with selection procedures.
- §52-1-16. Preservation of records.
- §52-1-17. Mileage and compensation of jurors.
- §52-1-18. When juror not entitled to compensation.

- §52-1-19. Record of allowance to jurors; certification to auditor; failure of clerk to comply with provisions; penalties.
- §52-1-20. Payment of compensation.
- §52-1-21. Excuse from employment.
- §52-1-22. Fraud in selection of jurors; penalties.
- §52-1-23. Length of service by jurors.
- §52-1-24. Penalties for failure to perform jury service.
- §52-1-25. Present methods of jury selection to remain in effect until preparation of master list.
- §52-1-26. Provisions apply to selection of jurors for magistrate juries.

§52-1-1. Declaration of policy.

1 It is the policy of this state that all persons selected
2 for jury service be selected at random from a fair cross
3 section of the population of the area served by the court,
4 and that all citizens have the opportunity in accordance
5 with this article to be considered for jury service and
6 an obligation to serve as jurors when summoned for that
7 purpose.

§52-1-2. Prohibition of discrimination.

1 A citizen may not be excluded from jury service on
2 account of race, color, religion, sex, national origin or
3 economic status.

§52-1-3. Definitions.

1 As used in this article:

2 (1) "The court" means the circuit and magistrate
3 courts of this state, and includes, when the context
4 requires, any judge of the court;

5 (2) "Clerk" means clerk of the circuit court and
6 includes any deputy circuit clerk;

7 (3) "Master list" means the voter registration lists and
8 drivers' license lists for the county which may be
9 supplemented with names from other sources prescribed
10 pursuant to section five of this article in order to foster
11 the policy and protect the rights secured by this article:
12 *Provided*, That in the case of a county whose circuit
13 court, or chief judge thereof, chooses to employ a jury
14 box in place of a jury wheel, that "master list" means
15 the voter registration lists for the county;

16 (4) "Voter registration lists" means the official records

17 of persons registered to vote in the most recent general
18 election;

19 (5) "Drivers' license lists" means the official records
20 of persons licensed by the state to operate motor vehicles
21 and who reside within the county and have applied for
22 a driver's license or renewal of a driver's license within
23 the preceding two years. The department of motor
24 vehicles shall furnish such a list upon request of the
25 clerk of the circuit court;

26 (6) "Jury wheel" means any electronic system in which
27 are placed names or identifying numbers of prospective
28 jurors taken from the master list and from which names
29 are drawn at random for jury panels;

30 (7) "Jury box" means any physical, nonelectronic
31 device in which are placed names or identifying
32 numbers of prospective jurors taken from the master list
33 and from which names are drawn at random for jury
34 panels.

§52-1-4. Jury commission.

1 (a) A jury commission is established in each county to
2 manage the jury selection process under the supervision
3 and control of the circuit court. The jury commission
4 shall be composed of the clerk of the circuit court and
5 two jury commissioners appointed for a term of four
6 years by the chief judge of the circuit court or judge in
7 a single judge circuit. The terms of office for
8 commissioners shall commence on the first day of June
9 following appointment. Those jury commissioners
10 appointed by the circuit court or the chief judge thereof
11 in office when this section takes effect shall continue in
12 office, unless removed, until the expiration of their
13 respective terms of office.

14 No jury commissioner, after having served four years,
15 shall be eligible to serve a successive additional term:
16 *Provided*, That a jury commissioner in a Class V, VI or
17 VII county, as defined in section three, article seven,
18 chapter seven of this code, shall be eligible for appoint-
19 ment to serve one additional successive four year term
20 in such office. The jury commissioners must be citizens

21 of the United States, residents of the county for which
 22 they are appointed, and well-known members of oppos-
 23 ing political parties of said county; the chairman of a
 24 political party shall be ineligible for appointment. The
 25 jury commissioners shall receive as compensation for
 26 their services, while necessarily employed, an amount to
 27 be fixed by the circuit court or the chief judge thereof,
 28 in accordance with the rules of the supreme court of
 29 appeals.

30 (b) Jury commissioners may be removed from office
 31 by the circuit court, or the chief judge thereof, for
 32 official misconduct, incompetency, habitual drunken-
 33 ness, neglect of duty or gross immorality. Vacancies
 34 caused by death, resignation or otherwise shall be filled
 35 for the unexpired term in the same manner as the
 36 original appointments.

37 (c) Before entering upon the discharge of duties, a jury
 38 commissioner shall take and subscribe to an oath to the
 39 following effect:

40 State of West Virginia,

41 County of _____, to wit:

42 I, A _____ B _____

43 do solemnly swear that I will support the Constitution
 44 of the United States and the Constitution of this State
 45 and will faithfully discharge the duties of jury commis-
 46 sioner to the best of my skill and judgment and that I
 47 will not place any person upon the jury list in violation
 48 of law.

§52-1-5. Master list.

1 (a) Each jury commission must employ either a jury
 2 wheel or a jury box. The choice of employing a jury
 3 wheel or jury box is in the discretion of the circuit court,
 4 or the chief judge thereof.

5 (b) (1) In those counties whose circuit courts, or chief
 6 judges thereof, choose to employ a jury wheel, the jury
 7 commission shall compile and maintain a master list
 8 consisting of all voter registration lists and drivers'
 9 license lists for the county, supplemented with names
 10 from other lists of persons resident therein, such as lists

11 of utility customers, property and income taxpayers, and
12 motor vehicle registrations, which the supreme court of
13 appeals may designate. The supreme court of appeals
14 may exercise the authority to designate lists from time
15 to time in order to foster the policy and protect the
16 rights asserted by this article. In compiling the master
17 list the commission shall avoid the duplication of names.

18 (2) In those counties whose circuit courts, or chief
19 judges thereof, choose to employ a jury box, the jury
20 commission shall compile and maintain a master list
21 consisting of all voter registration lists for the county.
22 In compiling the master list the commission shall avoid
23 duplication of names.

24 (c) Whoever has custody, possession or control of any
25 of the lists making up or used in compiling the master
26 list, including those designated under subsection (b) (1)
27 of this section by the supreme court of appeals as
28 supplementary sources of names, shall make the list
29 available to the jury commission for inspection, repro-
30 duction and copying at all reasonable times.

31 (d) The master list is open to the public for examina-
32 tion.

**§52-1-6. Jury wheel or jury box; random selection of
names from master list for jury wheel or
jury box.**

1 (a) The jury commission for each county shall main-
2 tain a jury wheel or jury box, into which the commission
3 shall place the names or identifying numbers of
4 prospective jurors taken from the master list.

5 (b) In counties having a population of less than fifteen
6 thousand persons according to the last available census,
7 the jury wheel or jury box shall include at least two
8 hundred names; in counties having a population of at
9 least fifteen thousand but less than fifty thousand, at
10 least four hundred names; a population of at least fifty
11 thousand but less than ninety thousand, at least eight
12 hundred names; and a population of ninety thousand or
13 more, at least one thousand six hundred names. From
14 time to time a larger or additional number may be

15 determined by the jury commission or ordered by the
16 circuit court to be placed in the jury wheel or jury box.
17 In October of each even-numbered year the jury wheel
18 or jury box shall be emptied and refilled as prescribed
19 in this article: *Provided*, That the jury commission shall
20 take measures to ensure that a sufficient number of
21 jurors has been drawn from the earlier jury wheel or
22 jury box before it is emptied to provide jurors for all
23 jury panels until the jury wheel or jury box is refilled
24 and additional jurors may be drawn therefrom; and
25 those jurors drawn from the former wheel or box shall
26 remain eligible as jurors until the last day of December
27 of that year, and if drawn for a particular jury which
28 has not finished hearing or deciding the matter before
29 it by the last day of December of that year, said person
30 shall remain eligible as a juror for that particular
31 unfinished case or grand jury session until said case or
32 session is finished or the juror is otherwise discharged
33 as provided by law.

34 (c) The names or identifying numbers of prospective
35 jurors to be placed in the jury wheel or jury box shall
36 be selected by the jury commission at random from the
37 master list in the following manner: The total number
38 of names on the master list shall be divided by the
39 number of names to be placed in the jury wheel or jury
40 box and the whole number next greater than the
41 quotient shall be the "key number," except that the key
42 number shall never be less than two. A "starting
43 number" for making the selection shall then be deter-
44 mined by a random method from the numbers from one
45 to the key number, both inclusive. The required number
46 of names shall then be selected from the master list by
47 taking in order the first name on the master list
48 corresponding to the starting number and then succes-
49 sively the names appearing in the master list at
50 intervals equal to the key number, recommencing if
51 necessary at the start of the list until the required
52 number of names has been selected. Upon recommenc-
53 ing at the start of the list, or if additional names are
54 subsequently to be selected for the master jury wheel or
55 jury box, names previously selected from the master list
56 shall be disregarded in selecting the additional names.

57 The jury commission is not required to, but may, use an
58 electronic or mechanical system or device in carrying
59 out its duties. (For example, assume a county with a
60 master list of eight thousand nine hundred eighty
61 names, a population of less than fifteen thousand, and
62 a desired jury box or wheel containing two hundred
63 names. Eight thousand nine hundred eighty names
64 divided by two hundred is forty-four and nine-tenths.
65 The next whole number is forty-five. The commission
66 would take every forty-fifth name on the list, using a
67 random starting number between one and forty-five.)

68 (d) Prior to implementing the procedure described in
69 subsection (c), the commission shall strike from the
70 master list the names of all those persons who have
71 served as petit jurors in the preceding two years.

**§52-1-7. Drawings from the jury wheel or jury box;
notice of jury duty; juror qualification forms;
penalties.**

1 (a) The chief judge of the circuit, or the judge in a
2 single judge circuit, shall provide by order rules
3 relating to the random drawing by the jury commission
4 of panels from the jury wheel or jury box for juries in
5 the circuit and magistrate courts. Upon receipt of the
6 direction and in the manner prescribed by the court, the
7 jury commission shall publicly draw at random from the
8 jury wheel or jury box the number of jurors specified.

9 (b) If a jury is ordered to be drawn, the clerk
10 thereafter shall cause each person drawn for jury
11 service to be served not less than thirty days before the
12 date for which the persons are to report for jury duty
13 with a summons either personally or by registered or
14 certified mail, return receipt requested, addressed to the
15 person at their usual residence, business or post-office
16 address, requiring them to report for jury service at a
17 specified time and place.

18 (c) If the summons provided in subsection (b) of this
19 section is served by registered or certified mail, the
20 clerk shall also serve in the same mail with the
21 summons a juror qualification form accompanied by
22 instructions to fill out and return the form by mail to

23 the clerk within ten days after its receipt. If the
24 summons provided in subsection (b) of this section is
25 served personally, such service shall also include a like
26 juror qualification form with similar instructions to
27 complete and return the form. The juror qualification
28 form is subject to approval by the circuit court as to
29 matters of form and shall elicit the name, address of
30 residence, sex, race and age of the prospective juror and
31 whether the prospective juror:

32 (1) Is a citizen of the United States and a resident of
33 the county;

34 (2) Is able to read, speak and understand the English
35 language;

36 (3) Has any physical or mental disability substantially
37 impairing the capacity to render satisfactory jury
38 service;

39 (4) Has served as a magistrate, petit or grand juror
40 within the previous two years;

41 (5) Has lost the right to vote because of a criminal
42 conviction; and

43 (6) Has been convicted of perjury, false swearing, or
44 other infamous offense.

45 The juror qualification form shall contain the prospec-
46 tive juror's declaration that the responses are true to the
47 best of the prospective juror's knowledge and an
48 acknowledgment that a willful misrepresentation of a
49 material fact may be punished by a fine of not more
50 than five hundred dollars or imprisonment for not more
51 than thirty days, or both fine and imprisonment.
52 Notarization of the juror qualification form shall not be
53 required. If the prospective juror is unable to fill out the
54 form, another person may do it for the prospective juror
55 and indicate that such person has done so and the reason
56 therefor. If it appears there is an omission, ambiguity
57 or error in a returned form, the clerk shall again send
58 the form with instructions to the prospective juror to
59 make the necessary addition, clarification or correction
60 and to return the form to the clerk within ten days after
61 its second receipt.

62 (d) Any prospective juror who fails to return a
63 completed juror qualification form as instructed shall be
64 directed by the jury commission to appear forthwith
65 before the clerk to fill out the juror qualification form.
66 At the time of the prospective juror's appearance for
67 jury service, or at the time of any interview before the
68 court or clerk, any prospective juror may be required
69 to fill out another juror qualification form in the
70 presence of the court or clerk, at which time the
71 prospective juror may be questioned, but only with
72 regard to the responses to questions contained on the
73 form and ground for the prospective juror's excuse or
74 disqualification. Any information thus acquired by the
75 court or clerk shall be noted on the juror qualification
76 form.

77 (e) A prospective juror who fails to appear as directed
78 by the commission pursuant to subsection (b) of this
79 section shall be ordered by the court to appear and show
80 cause for failure to appear as directed. If the prospective
81 juror fails to appear pursuant to the court's order or
82 fails to show good cause for failure to appear as directed
83 by the jury commission, such prospective juror is guilty
84 of civil contempt and shall be fined not more than one
85 thousand dollars.

86 (f) Any person who willfully misrepresents a material
87 fact on a juror qualification form or during any
88 interview described in subsection (b) of this section for
89 the purpose of avoiding or securing service as a juror,
90 is guilty of a misdemeanor, and, upon conviction, shall
91 be fined not more than five hundred dollars or impri-
92 soned not more than thirty days, or both fined and
93 imprisoned.

§52-1-8. Disqualification from jury service.

1 (a) The court, upon request of the jury commission or
2 a prospective juror or on its own initiative, shall
3 determine on the basis of information provided on the
4 juror qualification form or interview with the prospec-
5 tive juror or other competent evidence whether the
6 prospective juror is disqualified for jury service. The
7 clerk shall enter this determination in the space

8 provided on the juror qualification form and on the
9 alphabetical lists of names drawn from the jury wheel
10 or jury box.

11 (b) A prospective juror is disqualified to serve on a
12 jury if the prospective juror:

13 (1) Is not a citizen of the United States, at least
14 eighteen years old and a resident of the county;

15 (2) Is unable to read, speak and understand the
16 English language;

17 (3) Is incapable, by reason of substantial physical or
18 mental disability, of rendering satisfactory jury service;
19 but a person claiming this disqualification may be
20 required to submit a physician's certificate as to the
21 disability and the certifying physician is subject to
22 inquiry by the court at its discretion;

23 (4) Has served as a magistrate, petit or grand juror
24 within the previous two years;

25 (5) Has lost the right to vote because of a criminal
26 conviction; or

27 (6) Has been convicted of perjury, false swearing, or
28 other infamous offense.

29 (c) A prospective juror sixty-five years of age or older
30 is not disqualified from serving, but shall be excused
31 from service by the court upon the juror's request.

**§52-1-9. Assignment of jurors to jury panels; drawing of
additional jurors upon shortage of qualified
jurors.**

1 (a) The jurors drawn for jury service shall be assigned
2 at random by the clerk to each jury panel in a manner
3 prescribed by the court.

4 (b) If there is an unanticipated shortage of available
5 petit jurors drawn from the jury wheel or jury box the
6 court may require the sheriff to summon a sufficient
7 number of petit jurors selected at random by the clerk
8 from the jury wheel or jury box in a manner prescribed
9 by the circuit court.

10 (c) The names of the qualified jurors drawn from the
11 jury wheel or jury box and the contents of jury
12 qualification forms completed by those jurors shall be
13 made available to the public.

§52-1-10. No exemptions.

1 No qualified prospective juror is exempt from jury
2 service.

§52-1-11. Excuses from jury service.

1 (a) The court, upon request of a prospective juror or
2 on its own initiative, shall determine on the basis of
3 information provided on the juror qualification form or
4 interview with the prospective juror or other competent
5 evidence whether the prospective juror should be
6 excused from jury service. The clerk shall enter this
7 determination in the space provided on the juror
8 qualification form.

9 (b) A person who is not disqualified for jury service
10 under section eight of this article may be excused from
11 jury service by the court upon a showing of undue
12 hardship, extreme inconvenience, or public necessity,
13 for a period the court deems necessary, at the conclusion
14 of which the person shall reappear for jury service in
15 accordance with the court's direction.

§52-1-12. Discharge of excess jurors.

1 Any court may, upon the appearance of an excess
2 number of qualified jurors, dispense with the attendance
3 of the unneeded jurors on any one day the court is
4 sitting, as long as such discharge from duty is conducted
5 in a random fashion and in a manner consistent with
6 the spirit of this article.

**§52-1-13. Competency of jurors when municipality,
county or district is a party.**

1 In any suit or proceeding in which a county, district,
2 school district or municipal corporation is a party, no
3 person is incompetent as a juror because such person is
4 an inhabitant or taxpayer of the county, district, school
5 district or municipal corporation. In any case where a
6 municipal corporation is a party, the court, upon motion

7 of either party to the suit, made either on the first day
8 of the term of the court or at any other time not less
9 than five days before the day set for the trial, may, in
10 its discretion, disqualify jurors who are citizens or
11 taxpayers of such municipal corporations. But this
12 provision does not apply in any case between a munic-
13 ipal corporation and any citizen or taxpayer of such
14 corporation.

**§52-1-14. When and how jurors are to be summoned
from other county.**

1 In any criminal case in any court, if in the opinion of
2 the court, or the judge thereof in vacation, qualified
3 jurors, not exempt from serving, cannot be conveniently
4 found in the county in which the trial is to be, the court,
5 or the judge thereof in vacation, shall enter an order of
6 record to such effect and may cause so many jurors as
7 may be necessary to be summoned from any other
8 county. In such order the court, or the judge thereof in
9 vacation, shall fix a day on which the jurors shall be
10 required to attend and in the order shall indicate the
11 county from which the jurors shall be drawn and the
12 number of jurors to be drawn. An attested copy of the
13 order shall be certified to the circuit court of the county
14 designated, or the judge thereof in vacation, and
15 thereupon such circuit court or the judge thereof in
16 vacation, shall, by order, direct that a jury be drawn in
17 the manner provided by law for the drawing of petit
18 jurors and proceedings respecting the drawing of the
19 jurors, including the names of the jurors so drawn, shall
20 be certified by the clerk of the circuit court of the county
21 designated to the clerk of the court wherein the trial is
22 to be. Thereupon, the clerk of the circuit court of the
23 county from which the jurors are to be drawn shall
24 summon, in the manner provided in section nine of this
25 article, the jurors so drawn to attend for jury service in
26 the county wherein the trial is to be held.

**§52-1-15. Challenging compliance with selection
procedures.**

1 (a) Within seven days after the moving party disco-
2 vered or by the exercise of diligence could have

3 discovered the grounds therefor, and in any event before
4 the petit jury is sworn to try the case, a party may move
5 to stay the proceedings and in a criminal case to quash
6 the indictment or for other appropriate relief on the
7 ground of substantial failure to comply with this article
8 in selecting the jury.

9 (b) Upon motion filed under subsection (a) of this
10 section containing a sworn statement of facts which, if
11 true, would constitute a substantial failure to comply
12 with this article, the moving party is entitled to present
13 in support of the motion the testimony of the jury
14 commissioners or the clerk, any relevant records and
15 papers not public or otherwise available used by the jury
16 commissioners or the clerk, and any other relevant
17 evidence. If the court determines that in selecting a jury
18 there has been a substantial failure to comply with this
19 article, the court shall stay the proceedings pending the
20 selection of the jury in conformity with this article,
21 quash an indictment or grant other appropriate relief.

22 (c) In the absence of fraud, the procedures prescribed
23 by this section are the exclusive means by which a
24 person accused of a crime, the state or a party in a civil
25 case, may challenge a jury on the ground that the jury
26 was not selected in conformity with this article.

§52-1-16. Preservation of records.

1 All records and papers compiled and maintained by
2 the jury commissioners or the clerk in connection with
3 selection and service of jurors shall be preserved by the
4 clerk for at least four years after the jury wheel or jury
5 box used in their selection is emptied and refilled, or for
6 any longer period ordered by the court.

7 The jury commission of each county shall make an
8 annual report no later than the first day of March of
9 each year to the supreme court of appeals setting forth
10 the following information: Whether the commission
11 employed a jury box or jury wheel for the year reported,
12 and the age, race and gender of each person for whom
13 a juror qualification form has been received. The
14 supreme court of appeals shall provide this information
15 to the president of the senate and the speaker of the

16 house on an annual basis, no later than the first day of
17 April of each year.

§52-1-17. Mileage and compensation of jurors.

1 (a) A juror shall be paid mileage, at the rate set by
2 the commissioner of finance and administration for state
3 employees, for travel expenses from the juror's residence
4 to the place of holding court and return and shall be
5 compensated at a rate of between fifteen and forty
6 dollars, set at the discretion of the circuit court or the
7 chief judge thereof, for each day of required attendance
8 at sessions of the court. Such compensation shall be
9 based on vouchers submitted to the sheriff. Such
10 mileage and compensation shall be paid out of the state
11 treasury.

12 (b) When a jury in any case is placed in the custody
13 of the sheriff, he shall provide for and furnish the jury
14 necessary meals and lodging while they are in the
15 sheriff's custody at a reasonable cost to be determined
16 by an order of the court; and the meals and lodging shall
17 be paid for out of the state treasury.

18 (c) There shall be taxed in the costs against any person
19 against whom a judgment on the verdict of a jury may
20 be rendered in a case of misdemeanor or felony and
21 against any person against whom judgment on the
22 verdict of a jury may be rendered in a civil action, a
23 total of one hundred eighty dollars for jury costs. Such
24 costs when collected by the circuit clerk or the magis-
25 trate clerk from the party, shall be paid by the sheriff
26 into the state treasury. All money so received by the
27 clerk shall be forthwith paid by the clerk to the sheriff
28 and the clerk and the clerk's surety are liable therefor
29 on the clerk's official bond as for other money coming
30 into the clerk's hands by virtue of the clerk's office.

31 (d) The clerks of the circuit court and magistrate
32 court of each county in this state shall annually certify
33 to the county commission a list of all money so paid to
34 the clerk and by the clerk paid to the sheriff, and in
35 addition thereto, a correct list of all the cases in which
36 jury fees have been taxed and are, at the time, properly
37 due and payable in the state treasury, and the sheriff

38 of the county shall be held to account in the sheriff's
39 annual settlement for all such moneys collected by the
40 sheriff.

§52-1-18. When juror not entitled to compensation.

1 No juror who departs without leave of the court or
2 who, being summoned as a witness for the state, charges
3 for attendance as such, may be entitled to receive any
4 compensation for services as a juror.

§52-1-19. Record of allowance to jurors; certification to auditor; failure of clerk to comply with provisions; penalties.

1 The clerk of any court upon which juries are in
2 attendance shall, before the final adjournment of each
3 term, and under the direction of the court, make an
4 entry upon its minutes stating separately the amount
5 which each juror is entitled to receive out of the state
6 treasury for services or attendance during the term; and
7 the clerk of any court upon which juries are in
8 attendance, if directed by the court, shall at any time
9 during the term and under the direction of the court
10 make an entry upon its minutes stating separately the
11 amount which each juror is entitled to receive out of the
12 state treasury for services or attendance during the
13 term. It is the duty of the clerk, as soon as practicable
14 after adjournment of the court, to transmit to the
15 auditor certified copies of all orders under this section
16 making allowances payable out of the state treasury.
17 Any clerk who fails to pay over, as required by law, any
18 moneys so received by the clerk or otherwise to comply
19 with the provisions of this article, is guilty of a
20 misdemeanor, and, upon conviction thereof, shall be
21 fined not less than fifty dollars nor more than three
22 hundred dollars.

§52-1-20. Payment of compensation.

1 It is the duty of the clerk, as soon as practicable after
2 the adjournment of the court or before the adjournment
3 of the court at such time as the court may direct, to
4 deliver to the sheriff of the county certified copies of all
5 orders under section nineteen of this article making

6 allowances to jurors payable out of the state treasury.
7 The sheriff shall, upon receipt of such order or orders,
8 issue a check payable to the juror for the amount
9 allowed to him and deliver the check to the clerk who
10 shall deliver it to the juror. If any sheriff fails to pay
11 any allowance as required by law, the sheriff may be
12 proceeded against as for a contempt of court.

13 Any allowance paid by the sheriff under the provi-
14 sions of this section shall be repaid to the sheriff out of
15 the state treasury upon the production of satisfactory
16 proof that the same has actually been paid by the
17 sheriff. Proof of payment shall be in the form of a
18 complete itemized statement indicating the total amount
19 eligible for reimbursement.

§52-1-21. Excuse from employment.

1 Upon receiving a summons to report for jury duty an
2 employee shall, the next day the employee is engaged
3 in employment, exhibit the summons to the employee's
4 immediate superior and the employee shall thereupon be
5 excused from employment for the day or days required
6 in serving as a juror in any court created by the
7 constitutions of the United States or of the state of West
8 Virginia or the laws of the United States or the state
9 of West Virginia.

§52-1-22. Fraud in selection of jurors; penalties.

1 If any person is guilty of any fraud by tampering with
2 the jury wheel or jury box prior to drawing jurors or
3 in any other way in the drawing of jurors, such person
4 shall be guilty of a felony, and, upon conviction thereof,
5 shall be fined not more than five thousand dollars, or
6 imprisoned in the penitentiary for not less than one nor
7 more than five years, or both fined and imprisoned.

§52-1-23. Length of service by jurors.

1 In any two-year period a person may not be required:
2 (1) To serve or attend court for prospective service as
3 a juror more than thirty court days, except if necessary
4 to complete service in a particular case;
5 (2) To serve on more than one grand jury;

6 (3) To serve as both a grand and petit juror; or

7 (4) To serve as a petit juror at more than one term
8 of court.

§52-1-24. Penalties for failure to perform jury service.

1 A person summoned for jury service who fails to
2 appear or to complete jury service as directed shall be
3 ordered by the court to appear forthwith and show cause
4 for failure to comply with the summons. If the person
5 fails to show good cause for noncompliance with the
6 summons, the person is guilty of civil contempt and shall
7 be fined not more than one thousand dollars.

§52-1-25. Present methods of jury selection to remain in effect until preparation of master list.

1 The present method of jury selection utilized by a
2 county shall remain in full force until a master list of
3 potential jurors has been prepared by the jury commis-
4 sion under this article.

§52-1-26. Provisions apply to selection of jurors for magistrate juries.

1 All provisions of this article shall apply with equal
2 force and effect to the selection of jurors for magistrate
3 juries as well as for petit juries.

ARTICLE 2. GRAND JURIES.

§52-2-2. Provisions governing petit juries govern grand juries.

§52-2-3. Selection and summoning of jurors.

§52-2-4. Quorum; additional jurors.

§52-2-13. Compensation and mileage of grand jurors.

§52-2-2. Provisions governing petit juries govern grand juries.

1 The provisions of article one of this chapter relating
2 to petit juries, so far as applicable and not inconsistent
3 with the provisions of this article, shall be observed and
4 govern grand juries.

§52-2-3. Selection and summoning of jurors.

1 The jury commissioners of any court requiring a
2 grand jury shall, at least thirty days before the term of

3 court, draw and assign persons for the grand jury, but
4 the court, or judge thereof, may require the jury
5 commissioners to appear forthwith, or at any specified
6 time and draw and assign grand jurors for either a
7 regular, special or adjourned term of court. On the day
8 appointed, the jury commissioners shall appear and
9 draw the names of sixteen persons from the jury wheel
10 or jury box, and the persons so drawn shall constitute
11 the grand jury, and, at the same time the jury commis-
12 sioners shall draw the names of not less than six nor
13 more than twelve additional persons from the jury wheel
14 or jury box, as the chief judge of the circuit, or the judge
15 in a single judge circuit shall by prior order direct, and
16 the persons so drawn shall constitute alternate jurors for
17 the grand jury and the judge may replace any absent
18 members of the grand jury from among the alternate
19 grand jurors in the order in which the alternate jurors
20 were drawn. The jury commissioners shall enter the
21 names of all persons so drawn in a book kept for that
22 purpose, and they shall issue summonses to the persons
23 so drawn in the same manner as that provided for petit
24 jurors in subsection (b), section seven, article one of this
25 chapter.

§52-2-4. Quorum; additional jurors.

1 Any fifteen or more of the grand jurors attending
2 shall be a competent grand jury. If there is an unan-
3 ticipated shortage of grand jurors drawn from the jury
4 wheel or jury box, the court may require the sheriff to
5 summon a sufficient number of grand jurors selected by
6 the clerk in a manner prescribed and supervised by the
7 circuit court: *Provided*, That the number of grand jurors
8 selected in this manner not exceed two.

§52-2-13. Compensation and mileage of grand jurors.

1 Every person who shall serve upon a grand jury may
2 not be paid for more than four days' service at any one
3 term of the court, except in the counties of Harrison,
4 McDowell, Fayette, Cabell, Marshall, Marion, Mercer,
5 Wood, Ohio, Mingo, Monongalia, Preston and Summers,
6 where such grand jurors may not be paid for more than
7 ten days' service for any one term of court, and except

8 in Kanawha County where such grand jurors may not
9 be paid for more than sixty days' services for any one
10 term of court. Grand jurors shall be paid mileage, at the
11 rate set by the commissioner of finance and administra-
12 tion for state employees, for travel expenses incurred in
13 traveling from the grand juror's residence to the place
14 of the holding of the grand jury and return, and shall
15 be compensated at a rate of between fifteen and forty
16 dollars, set at the discretion of the circuit court or the
17 chief judge thereof, for each day of required attendance
18 at sessions of the court.

ARTICLE 3. DISCRIMINATION FOR JURY SERVICE.

§52-3-1. Right of action for discrimination against employees summoned for jury duty; penalties.

1 (a) Any person who, as an employee, is discriminated
2 against by his employer because such employee re-
3 ceived, or was served with a summons for jury duty, or
4 was absent from work to respond to a summons for jury
5 duty or to serve on any jury in any court of this state,
6 the United States or any state of the United States, may
7 have an action against his employer in the circuit court
8 of the county where the jury summons originated or
9 where the discrimination occurred. If the circuit court
10 finds that an employer terminated or threatened to
11 terminate from employment, or decreased the regular
12 compensation of employment of an employee for time
13 the employee was not actually away from his
14 employment because the employee served as a juror, the
15 court may order the employer to cease and desist from
16 this unlawful practice and order affirmative relief,
17 including, but not limited to, reinstatement of the
18 employee with or without back pay as will effectuate the
19 purposes of this section.

20 (b) Nothing in this section shall be construed to
21 require an employer to pay an employee any wages or
22 other compensation for the time the employee is actually
23 away from employment for jury services or to respond
24 to a jury summons.

25 (c) If the employee prevails in an action under
26 subsection (a) of this section, the employee shall be

27 allowed reasonable attorney's fees as fixed by the court.

28 (d) Any employer who discriminates against an
29 employee because the employee received or was served
30 with a summons for jury duty, or was absent from work
31 to respond to a summons for jury duty or to serve on
32 any jury in any court of this state, the United States or
33 any state of the United States, is guilty of civil contempt
34 and shall be fined not less than one hundred dollars nor
35 more than five hundred dollars.

CHAPTER 95

(S. B. 272—By Senators Lucht and Ash)

[Passed February 20, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-c, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to designation of the state director of health as an ex officio member of the legislative commission on juvenile law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

§49-5C-3. Appointment of members; terms.

1 The commission shall consist of:

2 (1) Three members of the Senate to be appointed by
3 the president of the Senate and three members of the
4 House of Delegates to be appointed by the speaker of the
5 house. No more than two of the three members appointed
6 by the president of the Senate and the speaker of the
7 house, respectively, may be members of the same political
8 party.

9 (2) The commissioner of the department of human
10 services, the commissioner of corrections and the state
11 director of health who shall serve as ex officio members.

12 (3) Two persons trained and employed as school guid-
13 ance counselors, one to be appointed by the president of
14 the Senate and one to be appointed by the speaker of the
15 house.

16 The first appointed members of the commission shall
17 serve for a term expiring on the thirtieth day of June in
18 the year of the next succeeding regular session of the
19 Legislature. At the commencement of such next succeed-
20 ing regular session and at the commencement of regular
21 sessions every two years thereafter, members of the
22 commission shall be appointed for two-year terms be-
23 ginning the first day of July in the year of each such
24 regular session. Vacancies on the commission shall be
25 filled for unexpired terms in the same manner as appoint-
26 ments to the commission.

CHAPTER 96

(Com. Sub. for H. B. 1079—By Delegate McKinley)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to labor; minimum wage and maximum hours standards for employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-2. Minimum wages.

1 After the thirty-first day of December, one thousand
2 nine hundred eighty six, every employer shall pay to
3 each of his employees wages at a rate not less than three
4 dollars and thirty-five cents per hour.

CHAPTER 97

(S. B. 434—By Senator R. Williams)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections six and nine, article two of said chapter twenty-nine-a; to amend and reenact sections nine, eleven, twelve and fifteen, article three of said chapter; to further amend said article three by adding thereto a new section, designated section fifteen-a; to amend and reenact sections sixteen (two-d) (eight), seventeen-a (two) (nine), twenty (one) (seven), twenty (five-e) (six), twenty (five-e) (seven), twenty-three (one) (thirteen) and thirty (three) (seven), article two, chapter sixty-four of said code; and that said article two be further amended by adding thereto nineteen new sections, designated sections ten (one) (eleven), eleven (one-a) (twenty-one), sixteen (four-c) (six), sixteen (five) (nine), sixteen (five-h) (two), sixteen (five-i) (five), sixteen (thirty-one) (four), seventeen-c (sixteen) (four), nineteen (one) (four-b), nineteen (two-f) (six), nineteen (ten-b) (nine), twenty-three (four-b) (six), twenty-nine-a (two) (six), thirty (three) (ten), thirty (three) (sixteen), thirty (thirteen) (five), thirty (twenty-five) (seven), thirty (twenty-six) (three) and thirty (twenty-six) (fifteen), all relating generally to the promulgation of administration rules and regulations by the various executive or administration agencies of the state and the procedures relating thereto; the manner of proposing a legislative rule; requiring rules promulgated by state colleges and universities be filed with the West Virginia board of regents; requiring the submission of any such legislative rule to the legislative rule-making review committee; deleting special procedures for adopting federal rules by reference; requiring secretary of state to prescribe uniform methods for compiling, numbering and indexing such rules; describing the method and the effect of proposing and filing a legislative rule; providing for the submission of agency-approved rules to the legislative rule-making review committee; describing the procedure to be followed by the legislative rule-making review committee in

submitting legislative rules to the Legislature; describing the procedure to be followed in promulgating emergency rules; prescribing the period during which emergency rules shall be effective and providing for their earlier expiration under certain conditions; authorizing the secretary of state to disapprove emergency rules not in compliance with statutory law; and providing for judicial review of the determination of the secretary of state as to whether or not an emergency rule should be disapproved; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain such agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-six; authorizing the West Virginia library commission to promulgate certain legislative rules designating a grace period for the return of certain library materials; authorizing the state tax commissioner to promulgate certain legislative rules relative to statewide electronic data processing system to facilitate administration of the ad valorem property tax on real and personal property; authorizing the West Virginia health care cost review authority to promulgate legislative rules relating to interim standards for lithotripsy services, as directed to be modified by the legislative rule making review committee; authorizing the director of health to promulgate certain legislative rules governing emergency medical services as modified as directed by the legislative rule-making review committee and as later amended; authorizing the director of health to promulgate certain legislative rules relating to adult group home licensure as directed to be modified by the legislative rule-making review committee; authorizing the state board of health to promulgate certain legislative rules relating to the licensure of hospice care programs including modifications thereto; authorizing the state department of health to promulgate certain legislative

rules revising the list of hazardous substances; authorizing the commissioner of motor vehicles to promulgate legislative rules relating to the reinstatement of driving privileges following suspension or revocation thereof, as modified; authorizing the commissioner of motor vehicles to promulgate legislative rules relating to the administration and enforcement of motor vehicle inspections; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to the increase of certain fees; authorizing the beef industry self-improvement assessment board to promulgate certain legislative rules relating generally to such self-improvement assessment program; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to the licensure of livestock dealers, as modified; authorizing the department of natural resources to promulgate certain legislative rules to WV/ NPDES regulations for the coal mining point source category and related sewage facilities; authorizing the department of natural resources to promulgate legislative rules relating to hazardous waste management, as modified as well as certain other legislative rules relating to hazardous waste management filed in the office of the secretary of state in the state registry on the fifth day of March, one thousand nine hundred eighty-six; authorizing the department of natural resources to promulgate legislative rules relating to hazardous waste management; small quantity generators and waste minimization certification with certain amendments thereto; authorizing the department of highways to promulgate certain legislative rules relating to the transportation of hazardous waste by highway transporters, with certain amendments, thereto; authorizing the department of highways to promulgate certain additional legislative rules relating to the transportation of hazardous waste by vehicle upon the roads and highways of this state, with certain amendments thereto; authorizing the workers' compensation commissioner to promulgate certain legislative rules with respect to the administration of the coal-workers pneumoconiosis fund with certain modifications and amendments thereto; authorizing the secretary of state to promulgate certain legislative rules relating to the standard size and format for rules and related documents filed in the

office of the secretary of state, with modifications thereto; authorizing the board of medicine to promulgate legislative rules relating to the licensure, disciplinary and complaints procedures with respect to the practice of podiatry and physicians assistants; authorizing the board of medicine to promulgate legislative rules governing the approval of medical schools not accredited by the liaison committee on medical education, with modifications; authorizing the state board of registration for professional engineers to promulgate legislative rules relating to registration for professional engineers, with modifications; authorizing the nursing home administrators licensing board to promulgate legislative rules governing nursing home administrators, with modifications; and authorizing the West Virginia board of hearing aid dealers to promulgate legislative rules governing said board, with modifications.

Be it enacted by the Legislature of West Virginia:

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

Chapter

29A. State Administrative Procedures.

64. Legislative Rules.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

Article.

1. Definitions and Application of Chapter.
2. State Register.
3. Rule Making.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3. Application of chapter; limitations.

1 (a) The provisions of this chapter do not apply in any
2 respect whatever to executive orders of the governor, which
3 orders to the extent otherwise lawful, shall be effective
4 according to their terms: *Provided*, That the executive
5 orders shall be admitted to record in the state register when
6 and to the extent the governor deems suitable and shall be
7 included therein by the secretary of state when tendered by
8 the governor.

9 (b) Except as to requirements for filing in the state
10 register, and with the Legislature or its rule-making review
11 committee, provided in this chapter or other law, the
12 provisions of this chapter do not apply in any respect
13 whatever to the West Virginia board of probation and
14 parole, the public service commission, the board of public
15 works sitting as such, the West Virginia board of education
16 and the West Virginia board of regents: *Provided*, That
17 rules of such agencies shall be filed in the state register in
18 the form prescribed by this chapter and be effective no
19 sooner than sixty consecutive days after being so filed:
20 *Provided, however*, That the rules promulgated by the state
21 colleges and universities shall only be filed with the West
22 Virginia board of regents: *Provided further*, That such
23 agencies may promulgate emergency rules in conformity
24 with section fifteen, article three of this chapter.

25 (c) The provisions of this chapter do not apply to rules
26 relating to, or contested cases involving public elections,
27 the conduct of inmates or other persons admitted to public
28 institutions, the conduct of students at public schools or
29 public educational institutions, the open seasons and the
30 bag, creel, size, age, weight and sex limits with respect to
31 the wildlife in this state, the conduct of persons in military
32 service or the receipt of public assistance. Such rules shall
33 be filed in the state register in the form prescribed by this

34 chapter and be effective upon filing.

35 (d) Nothing herein shall be construed to affect, limit or
36 expand any express and specific exemption from this
37 chapter contained in any other statute relating to a specific
38 agency, but such exemptions shall be construed and applied
39 in accordance with the provisions of this chapter to
40 effectuate any limitations on such exemptions contained in
41 any such other statute.

ARTICLE 2. STATE REGISTER.

§29A-2-6. Format and numbering of agency rules filed in state register.

§29A-2-9. Making orders and records available.

§29A-2-6. Format and numbering of agency rules filed in state register.

1 (a) Each rule or proposed rule filed by an agency in the
2 state register shall include as its initial provision: (1) A
3 statement identifying such rule as a legislative rule, an
4 interpretive rule, or a procedural rule, as the case may be;
5 (2) a statement of such section, article and chapter of this
6 code to which such rule or any part thereof relates; and (3) a
7 statement of the section, article and chapter of this code or
8 any other provision of law which provides authority for the
9 promulgation of such rule. The agency shall be estopped
10 from relying on any authority for the promulgation of such
11 rule which is not stated therein in accordance with the
12 requirements of this subdivision.

13 (b) Each rule when filed to be finally effective shall have
14 attached thereto an abstract of its promulgation history
15 prepared by the agency showing the date of the filing in the
16 state register of the content of, or notice of any procedure
17 relating to, action necessary under this chapter to cause
18 such rule to be finally effective: *Provided*, That any error or
19 omission in such abstract shall not affect the validity of any
20 rule or action in respect thereto.

21 (c) The secretary of state shall prescribe by legislative
22 rule a standard size, format, numbering and indexing for
23 rules to be filed in the state register and he may prescribe
24 such procedural or interpretive rules as he deems advisable
25 to clarify and interpret the provisions in this section. The
26 secretary of state shall refuse to accept for filing any rules
27 which do not comply with the specific provisions of this

28 section, and he may refuse to accept for filing any rules
29 which do not comply with the procedural rules issued by
30 him pursuant to this section until the rules sought to be filed
31 are brought into conformity with the secretary of state's
32 procedural rules.

33 (d) Unless and until the secretary of state prescribes
34 otherwise by rule issued and made effective under the
35 provisions of subsection (c) of this section, each rule filed in
36 the state register shall be on white paper measuring eight
37 and one-half inches by eleven inches, typewritten and
38 single-spaced, with a one inch margin at the top, bottom
39 and each side of each page, and shall be reproduced
40 photographically, or by xerography or other duplication
41 process. The secretary of state may grant specific
42 exceptions to such requirements in the case of maps,
43 diagrams and exhibits, if the same may not be conveniently
44 folded and fastened with the other pages of rules and in the
45 case of rules which incorporate the promulgation of a
46 federal agency or other organization which could not be
47 submitted in the standard size and format except at undue
48 expense. Materials submitted for inclusion in the state
49 register shall be fastened on the left side by two or more
50 fasteners attached through holes suitable for insertion into
51 ring binders.

§29A-2-9. Making orders and records available.

1 Every agency shall file in the state register all final
2 orders, decisions and opinions in the adjudication of
3 contested cases except those required for good cause to be
4 held confidential and not cited as precedent. Except as
5 otherwise required by statute, matters of official record
6 shall be made available for public inspection pursuant to
7 rules adopted in accordance with the provisions of this
8 chapter.

ARTICLE 3. RULE MAKING.

§29A-3-9. Proposal of legislative rules.

§29A-3-11. Submission of legislative rules to the legislative rule-making review committee.

§29A-3-12. Submission of legislative rules to Legislature.

§29A-3-15. Emergency legislative rules; procedures for promulgation; definition.

§29A-3-15a. Disapproval of emergency rules by the secretary of state; judicial review.

§29A-3-9. Proposal of legislative rules.

1 When an agency proposes a legislative rule, other than an
2 emergency rule, it shall be deemed to be applying to the
3 Legislature for permission, to be granted by law, to
4 promulgate such rule as approved by the agency for
5 submission to the Legislature or as amended and
6 authorized by the Legislature by law.

7 An agency proposing a legislative rule, other than an
8 emergency rule, shall first file in the state register a notice
9 of its proposal, including the text of the legislative rule and
10 including all materials required in the case of a procedural
11 or interpretive rule. The agency shall then proceed as in the
12 case of a procedural and interpretive rule to the point of, but
13 not including, final adoption. In lieu of final adoption, the
14 agency shall approve the rule, including any amendments,
15 for submission to the Legislature and file such notice of
16 approval in the state register and with the legislative rule-
17 making review committee.

18 Such approval of the rule by the agency for submission to
19 the Legislature shall be deemed to be approval for
20 submission to the Legislature only and not deemed to give
21 full force and effect until authority to do so is granted by
22 law.

§29A-3-11. Submission of legislative rules to the legislative rule-making review committee.

1 (a) When an agency finally approves a proposed
2 legislative rule for submission to the Legislature, pursuant
3 to the provisions of section nine of this article, the agency
4 shall submit to the legislative rule-making review
5 committee at its offices or at a regular meeting of such
6 committee fifteen copies of (1) the full text of the legislative
7 rule as finally approved by the agency, with new language
8 underlined and with language to be deleted from any
9 existing rule stricken-through but clearly legible; (2) a brief
10 summary of the content of the legislative rule and a
11 description and a copy of any existing rule which the agency
12 proposes to amend or repeal; (3) a statement of the
13 circumstances which require the rule; (4) a fiscal note
14 containing all information included in a fiscal note for
15 either house of the Legislature and a statement of the

16 economic impact of the rule on the state or its residents; and
17 (5) any other information which the committee may request
18 or which may be required by law.

19 (b) The committee shall review each proposed
20 legislative rule and, in its discretion, may hold public
21 hearings thereon. Such review shall include, but not be
22 limited to, a determination of:

23 (1) Whether the agency has exceeded the scope of its
24 statutory authority in approving the proposed legislative
25 rule;

26 (2) Whether the proposed legislative rule is in
27 conformity with the legislative intent of the statute which
28 the rule is intended to implement, extend, apply, interpret
29 or make specific;

30 (3) Whether the proposed legislative rule conflicts with
31 any other provision of this code or with any other rule
32 adopted by the same or a different agency;

33 (4) Whether the proposed legislative rule is necessary to
34 fully accomplish the objectives of the statute under which
35 the proposed rule was promulgated;

36 (5) Whether the proposed legislative rule is reasonable,
37 especially as it affects the convenience of the general public
38 or of persons particularly affected by it;

39 (6) Whether the proposed legislative rule could be made
40 less complex or more readily understandable by the general
41 public; and

42 (7) Whether the proposed legislative rule was
43 promulgated in compliance with the requirements of this
44 article and with any requirements imposed by any other
45 provision of this code.

46 (c) After reviewing the legislative rule, the committee
47 shall recommend that the Legislature:

48 (1) Authorize the agency to promulgate the legislative
49 rule, or

50 (2) Authorize the agency to promulgate part of the
51 legislative rule, or

52 (3) Authorize the agency to promulgate the legislative
53 rule with certain amendments, or

54 (4) Recommend that the rule be withdrawn.

55 The committee shall file notice of its action in the state
56 register and with the agency proposing the rule: *Provided*,
57 That when the committee makes the recommendations of

58 subdivision (2), (3) or (4) of this subsection, the notice shall
59 contain a statement of the reasons for such
60 recommendation.

61 (d) When the committee recommends that a rule be
62 authorized, in whole or in part, by the Legislature, the
63 committee shall instruct its staff or the office of legislative
64 services to draft a bill authorizing the agency to promulgate
65 all or part of the legislative rule, and incorporating such
66 amendments as the committee desires. If the committee
67 recommends that the rule not be authorized, it shall include
68 in its report a draft of a bill authorizing promulgation of the
69 rule together with a recommendation. Any draft bill
70 prepared under this section shall contain a legislative
71 finding that the rule is within the legislative intent of the
72 statute which the rule is intended to implement, extend,
73 apply or interpret and shall be available for any member of
74 the Legislature to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.

1 (a) No later than forty days before the sixtieth day of
2 each regular session of the Legislature, the cochairman of
3 the legislative rule-making review committee shall submit
4 to the clerk of the respective houses of the Legislature
5 copies of all proposed legislative rules which have been
6 submitted to and considered by the committee pursuant to
7 the provisions of section eleven of this article and which
8 have not been previously submitted to the Legislature for
9 study, together with the recommendations of the committee
10 with respect to such rules, a statement of the reasons for any
11 recommendation that a rule be amended or withdrawn, and
12 a statement that a bill authorizing the legislative rule has
13 been drafted by the staff of the committee or by legislative
14 services pursuant to section eleven of this article. The
15 cochairman of the committee may also submit such rules at
16 the direction of the committee at any time before or during a
17 special session in which consideration thereof may be
18 appropriate. The committee may refuse to consider and
19 withhold from its report any proposed legislative rule
20 which was submitted to the committee fewer than two
21 hundred ten days before the end of a regular session. The
22 clerk of each house shall submit the report to his house at
23 the commencement of the next session.

24 All bills introduced authorizing the promulgation of a
25 rule may be referred by the speaker of the House of
26 Delegates and by the president of the Senate to appropriate
27 standing committees of the respective houses for further
28 consideration or the matters may be otherwise dealt with as
29 each house or its rules provide. The Legislature may by act
30 authorize the agency to adopt a legislative rule
31 incorporating the entire rule, or may authorize the agency
32 to adopt a rule with any amendments which the Legislature
33 shall designate. The clerk of the house originating such act
34 shall forthwith file a copy of any bill enacted in
35 contemplation of this section in the state register and with
36 the agency proposing such rule and the clerk of each house
37 may prepare and file a synopsis of legislative action during
38 any session on any proposed rule submitted to the house
39 during such session for which authority to promulgate was
40 not by law provided during such session.

41 (b) If the Legislature fails during its regular session to
42 act upon all or part of any legislative rule which was
43 submitted to it by the legislative rule-making review
44 committee during such session, no agency may thereafter
45 issue any rule or directive or take other action to implement
46 such rule or part thereof unless and until otherwise
47 authorized to do so.

48 (c) Nothing herein shall be construed to prevent the
49 Legislature by law from authorizing or authorizing and
50 directing an agency to promulgate legislative rules not
51 proposed by the agency or upon which some procedure
52 specified in this chapter is not yet complete.

53 (d) Whenever the Legislature is convened by
54 proclamation of the governor, upon his own initiative or
55 upon application of the members of the Legislature, or
56 whenever a regular session of the Legislature is extended or
57 convened by the vote or petition of its members, the
58 Legislature may by act enacted during such extraordinary
59 or extended session authorize, in whole or in part, any
60 legislative rule whether submitted to the legislative rule-
61 making review committee, or not, if legislative action on
62 such rule during such session is a lawful order of business.

63 (e) Whenever a date is required by this section to be
64 computed in relation to the end of a regular session of the
65 Legislature, such date shall be computed without regard to

66 any extensions of such session occasioned solely by the
67 proclamation of the governor.

68 (f) Whenever a date is required to be computed from or
69 is fixed by the first day of a regular session of the
70 Legislature, it shall be computed or fixed in the year one
71 thousand nine hundred eighty-four, and each fourth year
72 thereafter without regard to the second Wednesday of
73 January of such years.

**§29A-3-15. Emergency legislative rules; procedure for
promulgation; definition.**

1 (a) Any agency with authority to propose legislative
2 rules may, without hearing, find that an emergency exists
3 requiring that emergency rules be promulgated and
4 promulgate the same in accordance with this section. Such
5 emergency rules, together with a statement of the facts and
6 circumstances constituting the emergency, shall be filed in
7 the state register and shall become effective immediately
8 upon such filing. Such emergency rules may adopt, amend
9 or repeal any legislative rule but the circumstances
10 constituting the emergency requiring such adoption,
11 amendment or repeal shall be stated with particularity and
12 be subject to de novo review by any court having original
13 jurisdiction of an action challenging their validity. Fifteen
14 copies of the rules and of the required statement shall be
15 filed forthwith with the legislative rule-making review
16 committee.

17 An emergency rule shall be effective for not more than
18 fifteen months and shall expire earlier if any of the
19 following occurs:

20 (1) The secretary of state, acting under the authority
21 provided for in section fifteen-a of this article, disapproves
22 the emergency rule because (A) the agency has exceeded the
23 scope of its statutory authority in promulgating the
24 emergency rule; (B) an emergency does not exist justifying
25 the promulgation of such rule; or (C) the rule was not
26 promulgated in compliance with the provisions of this
27 section.

28 (2) The agency has not previously filed and fails to file a
29 notice of public hearing on the proposed rule within sixty
30 days of the date the proposed rule was filed as an emergency
31 rule; in which case the emergency rule expires on the sixty-
32 first day.

33 (3) The agency has not previously filed and fails to file
34 the proposed rule with the legislative rule-making review
35 committee within one hundred eighty days of the date the
36 proposed rule was filed as an emergency rule; in which case
37 the emergency rule expires on the one hundred eighty-first
38 day.

39 (4) The Legislature has authorized or directed
40 promulgation of an authorized legislative rule dealing with
41 substantially the same subject matter since such emergency
42 rule was first promulgated, and in which case the
43 emergency rule expires on the date the authorized rule is
44 made effective.

45 (5) The Legislature has, by law, disapproved of such
46 emergency rule; in which case the emergency rule expires
47 on the date the law becomes effective.

48 (b) Any amendment to an emergency rule made by the
49 agency shall be filed in the state register and does not
50 constitute a new emergency rule for the purpose of
51 acquiring additional time or avoiding the expiration dates
52 in subdivision (1), (2), (3) or (4), subsection (a) of this section.

53 (c) Once an emergency rule expires due to the
54 conclusion of fifteen months or due to the effect of
55 subdivision (1), (2), (3) or (4), subsection (a) of this section,
56 the agency may not refile the same or similar rule as an
57 emergency rule.

58 (d) Emergency legislative rules currently in effect under
59 the prior provisions of this section may be refiled under the
60 provisions of this section.

61 (e) The provisions of this section shall not be used to
62 avoid or evade any provision of this article or any other
63 provisions of this code, including any provisions for
64 legislative review and approval of proposed rules. Any
65 emergency rule promulgated for any such purpose may be
66 contested in a judicial proceeding before a court of
67 competent jurisdiction.

68 (f) The legislative rule-making review committee may
69 review any emergency rule to determine (1) whether the
70 agency has exceeded the scope of its statutory authority in
71 promulgating the emergency rule; (2) whether there exists
72 an emergency justifying the promulgation of such rule; and
73 (3) whether the rule was promulgated in compliance with
74 the requirements and prohibitions contained in this section.

75 The committee may recommend to the agency, the
76 Legislature, or the secretary of state such action as it may
77 deem proper.

78 (g) For the purposes of this section, an emergency exists
79 when the promulgation of a rule is necessary for the
80 immediate preservation of the public peace, health, safety
81 or welfare or is necessary to comply with a time limitation
82 established by this code or by a federal statute or regulation
83 or to prevent substantial harm to the public interest.

**§29A-3-15a. Disapproval of emergency rules by the secretary
of state; judicial review.**

1 (a) Upon the filing of an emergency rule by an agency
2 under the provisions of section fifteen of this article, the
3 secretary of state shall review such rule and, within forty-
4 two days of such filing, shall issue a decision as to whether
5 or not such emergency rule should be disapproved.

6 (b) The secretary of state shall disapprove an emergency
7 rule if he determines:

8 (1) That the agency has exceeded the scope of its
9 statutory authority in promulgating the emergency rule;

10 (2) That an emergency does not exist justifying the
11 promulgation of the rule; or

12 (3) That the rule was not promulgated in compliance
13 with the provisions of section fifteen of this article.

14 (c) If the secretary of state determines, based upon the
15 contents of the rule or the supporting information filed by
16 the agency, that the emergency rule should be disapproved,
17 he may disapprove such rule without further investigation,
18 notice or hearing. If, however, the secretary of state
19 concludes that the information submitted by the agency is
20 insufficient to allow a proper determination to be made as
21 to whether the emergency rule should be disapproved, he
22 may make further investigation, including, but not limited
23 to, requiring the agency or other interested parties to
24 submit additional information or comment or fixing a date,
25 time and place for the taking of evidence on the issues
26 involved in making a determination under the provisions of
27 this section.

28 (d) The determination of the secretary of state shall be
29 reviewable by the supreme court of appeals under its
30 original jurisdiction, based upon a petition for a writ of

31 mandamus, prohibition or certiorari, as appropriate. Such
 32 proceeding may be instituted by:
 33 (1) The agency which promulgated the emergency rule;
 34 (2) A member of the Legislature; or
 35 (3) Any person whose personal or property interests will
 36 be significantly affected by the approval or disapproval of
 37 the emergency rule by the secretary of state.

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

- §64-2-10(1)(11). West Virginia library commission.
- §64-2-11(1a)(21). State tax commissioner.
- §64-2-16(2d)(8). State board of health; West Virginia health care cost review authority.
- §64-2-16(4c)(6). Director of health.
- §64-2-16(5d)(9). State board of health.
- §64-2-16(5h)(2). Director of health.
- §64-2-16(5i)(5). State board of health.
- §64-2-16(31)(4). State department of health.
- §64-2-17a(2)(9). Commissioner of motor vehicles.
- §64-2-17c(16)(4). Commissioner of motor vehicles.
- §64-2-19(1)(4b). Commissioner of agriculture.
- §64-2-19(2F)(6). Beef industry self-improvement assessment board.
- §64-2-19(10b)(9). Commissioner of agriculture.
- §64-2-20(1)(7). Department of natural resources.
- §64-2-20(5e)(6). Department of natural resources.
- §64-2-20(5e)(7). Department of highways.
- §64-2-23(1)(13). Workers' compensation commissioner.
- §64-2-23(4b)(6). Workers' compensation commissioner.
- §64-2-29a(2)(6). Secretary of state.
- §64-2-30(3)(7). Board of medicine.
- §64-2-30(3)(10). West Virginia board of medicine.
- §64-2-30(3)(16). Board of medicine.
- §64-2-30(13)(5). State board of registration for professional engineers.
- §64-2-30(25)(7). Nursing home administrators licensing board.
- §64-2-30(26)(3). West Virginia board of hearing aid dealers.
- §64-2-30(26)(15). West Virginia board of hearing aid dealers.

§64-2-10(1)(11). West Virginia library commission.

1 The legislative rules filed in the state register on the
 2 twenty-second day of October, one thousand nine hundred
 3 eighty-five, modified by the West Virginia library
 4 commission to meet the objections of the legislative rule-
 5 making review committee and refiled in the state register on

6 the twelfth day of November, one thousand nine hundred
7 eighty-five, relating to the West Virginia library
8 commission (designating a grace period for the return of
9 library materials) are authorized.

§64-2-11(1a)(21). State tax commissioner.

1 The legislative rules filed in the state register on the
2 twenty-second day of May, one thousand nine hundred
3 eighty-five, relating to the state tax commissioner (rules
4 governing the operation of a statewide electronic data
5 processing system network, to facilitate administration of
6 the ad valorem property tax on real and personal property)
7 are authorized.

**§64-2-16(2d)(8). State board of health; West Virginia health
care cost review authority.**

1 (a) The rules authorized by the Legislature in
2 subsection (a), section sixteen (2d)(5) of this article were
3 also proposed by the state board of health pursuant to
4 section eight, article two-d, chapter sixteen of this code.

5 (b) The legislative rules filed in the state register on the
6 twenty-fifth day of November, one thousand nine hundred
7 eighty-five, modified by the West Virginia health care cost
8 review authority to meet the objections of the legislative
9 rule-making review committee and refiled in the state
10 register on the twenty-eighth day of January, one thousand
11 nine hundred eighty-six, relating to the West Virginia
12 health care cost review authority (interim standards for
13 lithotripsy services) are authorized.

§64-2-16(4c)(6). Director of health.

1 The legislative rules filed in the state register on the
2 thirty-first day of October, one thousand nine hundred
3 eighty-five, modified by the director of health to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the twenty-seventh day of
6 December, one thousand nine hundred eighty-five, relating
7 to the director of health (rules governing emergency
8 medical services) are authorized with the amendments set
9 forth below:

10 On page 3, §3.9 shall read as follows:

11 "3.9 Quorum — When applied to the EMSAC, a majority

12 of the members thereof, except in the instance when at any
13 meeting of the EMSAC, where a quorum is not present and
14 the director causes to be deposited in the United States
15 mail, postage prepaid, return receipt requested, to each
16 member of the EMSAC within three days, a notice calling a
17 meeting of the EMSAC at some convenient place in the state
18 of West Virginia two weeks after the meeting at which no
19 quorum was present. Quorum means any number of
20 members of the EMSAC who attend such subsequent
21 meeting. Any member missing two consecutive meetings
22 shall be removed from the EMSAC."

23 On page 6, §4.7.1 shall be deleted in its entirety, and

24 On page 7, §4.10.1 shall read as follows:

25 "4.10.1 every applicant for certification as an EMSP prior
26 to such certification, shall demonstrate his or her
27 knowledge and ability by undergoing a written
28 examination and a demonstration of skills, and by attaining
29 a passing score on the same. Passing score shall be the same
30 for all testing programs."

§64-2-16(5d)(9). State board of health.

1 The rules promulgated by the Legislature in subsection
2 (a), section sixteen (five-i)(five) of this article were also
3 proposed by the state board of health pursuant to section
4 nine, article five-d, chapter sixteen of this code.

§64-2-16(5h)(2). Director of health.

1 The legislative rules filed in the state register on the
2 seventeenth day of December, one thousand nine hundred
3 eighty-five, modified by the director of health to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the fifteenth day of
6 January, one thousand nine hundred eighty-six, relating to
7 the director of health (adult group home licensure) are
8 authorized.

§64-2-16(5i)(5). State board of health.

1 The legislative rules filed in the state register on the
2 twenty-ninth day of October, one thousand nine hundred
3 eighty-five, modified by the state board of health to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the twenty-

6 seventh day of December, one thousand nine hundred
7 eighty-five, relating to the state board of health (licensure
8 of hospice care programs) are authorized.

§64-2-16(31)(4). State department of health.

1 The legislative rules filed in the state register on the fifth
2 day of September, one thousand nine hundred eighty-five,
3 relating to the state department of health (revising the list
4 of hazardous substances) are authorized.

§64-2-17a(2)(9). Commissioner of motor vehicles.

1 (a) The legislative rules filed in the state register on the
2 second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor vehicles
4 (denial of driving privileges), are authorized with the
5 amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by striking
9 out the words "licensed vision specialist" and inserting in
10 lieu thereof the words "an optometrist or ophthalmologist
11 licensed in the United States," on page five, line three, and
12 on page seven, line two.

13 These rules were proposed by the commissioner pursuant
14 to section nine, article two, chapter seventeen-a and section
15 six, article three-c, chapter seventeen-b of this code.

16 (b) The legislative rules filed in the state register on the
17 twentieth day of November, one thousand nine hundred
18 eighty-four, relating to the commissioner of motor vehicles
19 (titling a vehicle) are authorized.

20 (c) The legislative rules filed in the state register on the
21 fifth day of August, one thousand nine hundred eighty-five,
22 modified by the commissioner of motor vehicles to meet the
23 objections of the legislative rule-making review committee
24 and refiled in the state register on the fourth day of October,
25 one thousand nine hundred eighty-five, relating to the
26 commissioner of motor vehicles (eligibility for
27 reinstatement following suspension or revocation of
28 driving privileges) are authorized.

§64-2-17c(16)(4). Commissioner of motor vehicles.

1 The legislative rules filed in the state register on the fifth

2 day of August, one thousand nine hundred eighty-five,
3 relating to the commissioner of motor vehicles (the
4 administration and enforcement of motor vehicle
5 inspections) are authorized.

§64-2-19(1)(4b). Commissioner of agriculture.

1 The legislative rules filed in the state register on the
2 eighth day of March, one thousand nine hundred eighty-
3 five, relating to the commissioner of agriculture (increasing
4 certain fees by rules and regulations) are authorized.

§64-2-19(2F)(6). Beef industry self-improvement assessment board.

1 The legislative rules filed in the state register on the
2 nineteenth day of April, one thousand nine hundred eighty-
3 five, relating to the beef industry self-improvement
4 assessment board (beef industry self-improvement
5 assessment program) are authorized.

§64-2-19(10b)(9). Commissioner of agriculture.

1 The legislative rules filed in the state register on the
2 thirteenth day of January, one thousand nine hundred
3 eighty-six, modified by the commissioner of agriculture to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the thirty-first
6 day of January, one thousand nine hundred eighty-six,
7 relating to the commissioner of agriculture (licensing of
8 livestock dealers) are authorized.

§64-2-20(1)(7). Department of natural resources.

1 (a) The legislative rules filed in the state register on the
2 twenty-sixth day of September, one thousand nine hundred
3 eighty-four, relating to the department of natural resources
4 (public use of state parks, forests, hunting and fishing
5 areas) are authorized.

6 (b) The legislative rules filed in the state register on the
7 ninth day of September, one thousand nine hundred eighty-
8 five, relating to the department of natural resources (WV/
9 NPDES regulations for the coal mining point source
10 category and related sewage facilities) are authorized.

§64-2-20(5e)(6). Department of natural resources.

1 (a) The legislative rules filed in the state register on the

2 sixth day of January, one thousand nine hundred eighty-
3 four, relating to the department of natural resources
4 (hazardous waste management) are authorized.

5 (b) The legislative rules filed in the state register on the
6 sixth day of January, one thousand nine hundred eighty-
7 four, relating to the air pollution control commission (to
8 prevent and control air pollution from hazardous waste
9 treatment, storage or disposal facilities) (series XXV) are
10 authorized with the amendments set forth below:

11 Page 3, §1.06, change the § title from "Enforcement" to
12 "Procedure"; place an "(a)" in front of the existing
13 paragraph and add the following:

14 "(b) Permit applications filed pursuant to this
15 regulation shall be processed in accordance with the
16 permitting procedures as set forth in code §20-5E of this
17 regulation. Permit procedures set forth in code §16-20 and
18 any other regulation of this commission are not applicable
19 to any permit application filed pursuant to this regulation."

20 Such rules shall also include a section which shall read as
21 follows:

22 "The commission shall report to the legislative rule-
23 making review committee as required by that committee,
24 but in no event later than the first day of the regular session
25 of the Legislature in the year one thousand nine hundred
26 eighty-five. Such report shall include information
27 regarding the commission's data gathering efforts, the
28 development of compliance programs, the progress in
29 implementation, and such other matters as the committee
30 may require, pertaining to the regulations hereby
31 authorized."

32 (c) The legislative rules filed in the state register on the
33 third day of December, one thousand nine hundred eighty-
34 four, modified by the department of natural resources to
35 meet the objections of the legislative rule-making review
36 committee and refiled in the state register on the thirteenth
37 day of February, one thousand nine hundred eighty-five,
38 relating to the department of natural resources (hazardous
39 waste management), are authorized.

40 (d) The legislative rules filed in the state register on the
41 eleventh day of December, one thousand nine hundred
42 eighty-five, modified by the department of natural
43 resources to meet the objections of the legislative rule-

44 making review committee and refiled in the state register on
45 the twentieth day of February, one thousand nine hundred
46 eighty-six, relating to the department of natural resources
47 (hazardous waste management) are authorized.

48 (e) The legislative rules filed in the state register on the
49 fifth day of March, one thousand nine hundred eighty-six,
50 relating to the department of natural resources (hazard-
51 ous waste management) are authorized.

52 (f) The legislative rules filed in the state register on the
53 tenth day of October, one thousand nine hundred eighty-
54 five, relating to the department of natural resources
55 (hazardous waste management: Small quantity generators
56 and waste minimization certification) are authorized with
57 the amendments set forth below:

58 On page 1, §3.1.4b delete the word "or" in the reference to
59 "paragraph (g) or (j)" and insert in lieu thereof the words
60 "and, if applicable."

§64-2-20(5e)(7). Department of highways.

1 (a) The legislative rules filed in the state register on the
2 twenty-first day of October, one thousand nine hundred
3 eighty-three, relating to the commissioner of highways
4 (transportation of hazardous waste by highway
5 transporters) are authorized with the amendments set forth
6 below:

7 Page 3 and 7 after "40 CFR part 262" add the words "as
8 amended through March 8, 1986,"

9 Page 7 after "49 CFR parts 171-179" add the words "as
10 amended through March 8, 1986," and

11 Page 11 after "49 CFR part 171.16" add the words "as
12 amended through March 8, 1986."

13 (b) The legislative rules filed in the state register on the
14 seventh day of September, one thousand nine hundred
15 eighty-four, modified by the commissioner of highways to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the fifth day of
18 October, one thousand nine hundred eighty-four, relating
19 to the commissioner of highways (transportation of
20 hazardous waste) are authorized with the amendment set
21 forth below:

22 Page 5, by amending §3.01 by adding thereto a new
23 subsection, designated subsection (4), to read as follows:

24 “(4) Before accepting hazardous waste from a rail
25 transporter, a highway transporter must sign and date the
26 manifest and provide a copy to the rail transporter.”

27 (c) The legislative rules filed in the state register on the
28 twelfth day of December, one thousand nine hundred
29 eighty-five, relating to the commissioner of highways
30 (governing the transportation of hazardous wastes by
31 vehicle upon the roads and highways of this state) are
32 authorized with the amendments set forth below:

33 On page 18, the first line of §3.03 shall read as follows:

34 “3.03. Transporters who only accept Hazardous Waste
35 from”.

§64-2-23(1)(13). Workers' compensation commissioner.

1 (a) The legislative rules filed in the state register on the
2 twenty-fifth day of October, one thousand nine hundred
3 eighty-four, relating to the workers' compensation
4 commissioner (time lists for the administration proceedings
5 of adjudications and awards) are authorized.

6 (b) The legislative rules filed in the state register on the
7 sixth day of August, one thousand nine hundred eighty-
8 five, relating to the workers' compensation commissioner
9 (standards for medical examination in occupational
10 pneumoconiosis claims) are authorized with the
11 amendments set forth below:

12 On page 1, the second and third unnumbered paragraphs
13 on page one are amended to read as follows:

14 When two or more ventilatory function tests performed in
15 reasonably close proximity in time produce differing but
16 acceptable results, the Commissioner, at the request of the
17 O. P. Board, may direct the parties to furnish additional
18 evidence and/or order additional testing at the laboratory
19 utilized by the O. P. Board or other laboratories, all for the
20 purpose of determining whether any of the results are
21 unreliable or incorrect or are clearly attributable to some
22 identifiable disease or illness other than occupational
23 pneumoconiosis.

24 When blood gas studies are performed and abnormal
25 values are obtained and thereafter new blood gas studies
26 are performed and normal or significantly higher values are
27 further obtained, the Commissioner, at the request of the O.
28 P. Board, may direct the parties to furnish additional

29 evidence and/or order additional studies at the laboratory
30 utilized by the O. P. Board or other laboratories, all for the
31 purpose of determining whether any of the values are
32 unreliable or incorrect or are clearly attributable to some
33 identifiable disease or illness other than occupational
34 pneumoconiosis.

35 And on page 7, paragraph (11) is amended to read as
36 follows:

37 (11) It is recognized that arterial blood gas studies done
38 in laboratories throughout this state are obtained at
39 different altitudes. Only by "standardizing" for altitude
40 can an equitable assessment be made of impairment when
41 values of arterial oxygen are being measured at remarkably
42 different altitudes. Therefore, the results reported from
43 laboratories should include the name of the laboratory and
44 the date and time of the testing, altitude of the laboratory
45 and barometric pressure at the laboratory on the day the
46 samples were collected. The O. P. Board will evaluate the
47 arterial blood gas values by converting those values to the
48 average altitude of Charleston, West Virginia. For this
49 purpose, it shall be sufficient to add 1 mmHg to each
50 arterial oxygen tension for each 300 feet or fraction thereof
51 that the testing laboratory is located above the average
52 altitude of Charleston, because the relationship of
53 barometric pressure (altitude) and alveolar oxygen is
54 approximately linear up to 4,000 feet as long as the subject
55 breathes room air.

56 As an example, Bluefield is located approximately 2,600
57 feet above sea level. Charleston is approximately 600 feet
58 above sea level. Thus, arterial oxygen values obtained in
59 Bluefield should have 6.67 mmHg added to them before
60 applying the table to them to obtain "percent impairment."
61 The calculations are as follows:

62 "Bluefield (2,600') minus Charleston (600') equals 2,000'
63 differential
64 2,000' divided by 300' altitude equals 6.67
65 6.67 multiplied by 1 mmHg per 300' altitude equals 6.67
66 mmHg".

§64-2-23(4b)(6). Workers' compensation commissioner.

1 The legislative rules filed in the state register on the ninth
2 day of August, one thousand nine hundred eighty-five,

3 modified by the workers' compensation commissioner to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the fifteenth
6 day of January, one thousand nine hundred eighty-six,
7 relating to the workers' compensation commissioner
8 (administration of the coal-workers' pneumoconiosis fund)
9 are authorized.

§64-2-29a(2)(6). Secretary of state.

1 The legislative rules filed in the state register on the
2 fifteenth day of April, one thousand nine hundred eighty-
3 five, modified by the secretary of state to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the eighth day of October,
6 one thousand nine hundred eighty-five, relating to the
7 secretary of state (standard size and format for rules and
8 related documents filed in the secretary of state's office) are
9 authorized.

§64-2-30(3)(7). Board of medicine.

1 (a) The legislative rules filed in the state register on the
2 twelfth day of May, one thousand nine hundred eighty-
3 three, relating to the board of medicine (licensing,
4 disciplinary and complaint procedures; podiatry;
5 physicians assistants) are authorized with the
6 modifications set forth below:

7 "§24.12.

8 (b) It shall be the responsibility of the supervising
9 physician to obtain consent in writing from the patient
10 before Type A physician assistants employed in a satellite
11 clinic may render general medical or surgical services,
12 except in emergencies.

13 §24.16.

14 (p) No physician assistant shall render nonemergency
15 outpatient medical services until the patient has been
16 informed that the individual providing care is a physician
17 assistant."

18 (b) The legislative rules filed in the state register on the
19 twenty-sixth day of November, one thousand nine hundred
20 eighty-five, modified by the board of medicine to meet the
21 objections of the legislative rule-making review committee
22 and refiled in the state register on the seventeenth day of

23 January, one thousand nine hundred eighty-six, relating to
24 the board of medicine (licensing, disciplinary and
25 complaint procedures; podiatry; physicians assistants) are
26 authorized. These rules were proposed by the board of
27 medicine pursuant to sections seven and sixteen, article
28 three, chapter thirty of this code.

29 (c) The legislative rules filed in the state register on the
30 eighth day of March, one thousand nine hundred eighty-
31 five, modified by the West Virginia board of medicine to
32 meet the objections of the legislative rule-making review
33 committee and refiled in the state register on the eighteenth
34 day of December, one thousand nine hundred eighty-five,
35 relating to the West Virginia board of medicine (rules
36 governing the approval of medical schools not accredited by
37 the liaison committee on medical education) are authorized.
38 These rules were proposed by the West Virginia board of
39 medicine pursuant to sections seven and ten, article three,
40 chapter thirty of this code.

§64-2-30(3)(10). West Virginia board of medicine.

1 The rules authorized by the Legislature in subsection (a),
2 section thirty (three) (seven) of this article were also
3 proposed by the West Virginia board of medicine pursuant
4 to section ten, article three, chapter thirty of this code.

§64-2-30(3)(16). Board of medicine.

1 The rules authorized by the Legislature in subsection (b),
2 section thirty (three) (seven) of this article were also
3 proposed by the board of medicine pursuant to section
4 sixteen, article three, chapter thirty of this code.

§64-2-30(13)(5). State board of registration for professional engineers.

1 The legislative rules filed in the state register on the
2 twenty-ninth day of November, one thousand nine hundred
3 eighty-five, modified by the state board of registration for
4 professional engineers to meet the objections of the
5 legislative rule-making review committee and refiled in the
6 state register on the twenty-eighth day of January, one
7 thousand nine hundred eighty-six, relating to the West
8 Virginia board of registration for professional engineers
9 (legislative rules governing the West Virginia state board of

10 registration for professional engineers) are authorized.

§64-2-30(25)(7). Nursing home administrators licensing board.

1 The legislative rules filed in the state register on the
2 eighteenth day of October, one thousand nine hundred
3 eighty-five, modified by the nursing home administrators
4 licensing board to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twenty-eighth day of January, one thousand
7 nine hundred eighty-six, relating to the nursing home
8 administrators licensing board (governing nursing home
9 administrators) are authorized.

§64-2-30(26)(3). West Virginia board of hearing aid dealers.

1 The legislative rules filed in the state register on the
2 twenty-sixth day of November, one thousand nine hundred
3 eighty-five, modified by the West Virginia board of hearing
4 aid dealers to meet the objections of the legislative rule-
5 making review committee and refiled in the state register on
6 the twenty-eighth day of January, one thousand nine
7 hundred eighty-six, relating to the West Virginia board of
8 hearing aid dealers (rules governing the West Virginia
9 board of hearing aid dealers) are authorized. These rules
10 were proposed by the West Virginia board of hearing aid
11 dealers pursuant to sections three and fifteen, article
12 twenty-six, chapter thirty of this code.

§64-2-30(26)(15). West Virginia board of hearing aid dealers.

1 The rules authorized by the Legislature in section thirty
2 (twenty-six) (three) of this article were also proposed by the
3 West Virginia board of hearing aid dealers pursuant to
4 section fifteen, article twenty-six, chapter thirty of this
5 code.

CHAPTER 98

(H. B. 1002—By Mr. Speaker, Mr. Albright, and Delegate Wooton)

[Passed January 29, 1986; in effect from passage. Vetoed by the Governor.
Passed February 12, 1986, notwithstanding Governor's objections.]

AN ACT to amend article five, chapter four 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 exempting the investigations of the commission on special investigations from the freedom of information act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-5. Investigations exempt from public disclosure requirements.

1 The investigations conducted by the commission and
 2 the materials placed in the files of the commission as
 3 a result of any such investigation are exempt from
 4 public disclosure under the provisions of chapter
 5 twenty-nine-b of this code.

CHAPTER 99

(S. B. 251—By Senator Palumbo)

[Passed March 5, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to liens; vendor's and trust deed liens; future advances secured by credit line deed of trust; form; priority over other liens; release.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article one, chapter thirty-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. VENDOR'S AND TRUST DEED LIENS.

§38-1-14. Future advances secured by credit line deed of trust; form; priority over other liens; release.

1 (a) Whenever a deed of trust otherwise complying
2 with the provisions of this article is clearly entitled at the
3 beginning thereof either in capital letters or in language
4 underscored, the words, "A CREDIT LINE DEED OF
5 TRUST," the deed of trust shall be, from the time it is
6 duly recorded as required by law, security for all indebted-
7 edness secured thereby at the time of recording and for
8 all future advances secured thereby in an aggregate
9 principal amount outstanding at any time not to exceed
10 the maximum amount stated in the deed of trust, without
11 regard to whether the future advances are contracted
12 for at the time of recordation of the deed of trust or
13 whether the secured party under the deed of trust re-
14 advances principal sums repaid. The deed of trust shall
15 also be security for interest on the principal sums and for
16 taxes, insurance premiums and other obligations, includ-
17 ing interest thereon, undertaken by the secured party in
18 the deed of trust or in the related loan agreement, note or
19 other evidences of indebtedness secured thereby. The in-
20 terest, taxes, insurance premiums and other obligations
21 when added to the total principal amount of the loans
22 outstanding at any time may increase the amount secured
23 by the deed of trust above the stated maximum amount.

24 (b) A credit line deed of trust, in addition to other
25 provisions of this code, shall conform with the following:

26 (1) The deed of trust shall contain specific provisions
27 permitting or requiring future advances;

28 (2) At no time may the unpaid principal balance of
29 indebtedness secured by the deed of trust exceed the
30 maximum amount stated therein, except as specifically
31 provided for in subsection (a) of this section; and

32 (3) The original deed of trust must be executed and
33 recorded after the effective date of this section.

34 (c) Except as otherwise provided herein, the deed of
35 trust to the extent of the principal amount of the loan
36 secured thereby, interest thereon, taxes, insurance pre-
37 miums and other obligations, including interest thereon,

38 secured thereby, has priority over all other deeds of trust,
39 liens and encumbrances of every nature, however created
40 or arising, to the same extent and for the same amount as
41 if all the amounts were advanced immediately after the
42 date and time the deed of trust is recorded.

43 (d) Any mechanic's lien, abstract of judgment, notice
44 of lis pendens, other deed of trust or other lien of encum-
45 brance, which affects the property encumbered by the
46 credit line deed of trust and which is duly recorded and
47 perfected as required by law after the recording of the
48 credit line deed of trust, shall have priority over any
49 optional or nonobligatory advances secured by the credit
50 line deed of trust and made by the secured party under
51 the credit line deed of trust after receipt by the secured
52 party, at the address provided for the purpose in the credit
53 line deed of trust, of written notice of such mechanic's
54 lien, judgment lien, notice of lis pendens, other deed
55 of trust or other lien or encumbrance. However, any
56 obligatory advances which the secured party contracted
57 to make by written agreement entered into with the
58 obligor whose indebtedness is secured by the deed of trust,
59 prior to receipt of this written notice, and any taxes, in-
60 surance premiums and obligations which the secured
61 party has agreed to pay, or which under the deed of trust
62 or otherwise the secured party has the right to pay in
63 connection with such deed of trust, shall continue to have
64 the priority created under subsection (a) of this section
65 over a mechanic's lien, judgment lien, notice of lis pen-
66 dens, deed of trust or other lien or encumbrance. For the
67 purposes of this section, an "obligatory advance" means
68 any advance of principal which the secured party under
69 the deed of trust is legally obligated to make in the
70 absence of the occurrence of a specific event under the
71 deed of trust or related loan agreement or note, by a
72 specified date or time or upon application therefor by the
73 grantor under the deed of trust or by another obligor
74 whose indebtedness is secured by the deed of trust.

75 (e) Notwithstanding any other provision of this code,
76 the secured party under a credit line deed of trust subject
77 to this section shall be obligated to release the deed of
78 trust at such time as all indebtedness secured thereby has

79 been paid in full and the secured party has been duly
80 released from any further obligation to make future ad-
81 vances under any note or agreement secured by the deed
82 of trust. This release shall become effective upon the
83 recording of the release and the secured party shall be
84 released and discharged from any further obligation.

CHAPTER 100

(Com. Sub. for H. B. 1353—By Delegate W. Martin)

[Passed February 28, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-eight 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 ensuring the validity of a deed of trust upon the renewal of a loan.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-15. Validity of deed of trust upon renewal of loan.

- 1 Upon the renewal of a loan agreement in the instance
- 2 when no additional principal is advanced, the original
- 3 deed of trust is sufficient for the purpose of securing the
- 4 loan, regardless of any change in the rate of interest.

CHAPTER 101

(H. B. 1883—By Delegate Wiedebusch)

[Passed March 7, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seven 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 creating a county linked deposit program; definitions; legislative findings; authority to invest; limitations on investment in linked deposits; loan cap; applications for loan; priorities; loan package; acceptance or rejection of loan package; deposit agreement; rate of loan; certification and monitoring of compliances; reports; liability of the county commission or its agent; and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter 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. COUNTY LINKED DEPOSIT PROGRAM.

§7-19-1. Definitions.

§7-19-2. Legislative findings.

§7-19-3. Authority to invest; limitations on investment in linked deposits; loan cap.

§7-19-4. Applications for loan; priorities; loan package.

§7-19-5. Acceptance or rejection of loan package; deposit agreement.

§7-19-6. Rate of loan; certification and monitoring of compliance; reports.

§7-19-7. Liability of the county commission or its agent.

§7-19-8. Penalties for violation of article.

§7-19-1. Definitions.

1 (a) "Agent" means the county commission or, where
2 created, the county economic development program or
3 the county economic development agency.

4 (b) "Eligible lending institution" means a financial
5 institution that is eligible to make commercial loans, is
6 a public depository of county funds and agrees to
7 participate in the linked deposit program.

8 (c) "Eligible small business" means any business
9 which employs fifty or fewer employees or has gross
10 annual receipts of two million dollars or less.

11 (d) "Linked deposit" means a certificate of deposit
12 placed by the agent with an eligible lending institution
13 at up to and including five percent below current

14 market rates, as determined and calculated by the
15 agent, provided the institution agrees to lend the value
16 of such deposit, according to the deposit agreement
17 provided for by this article, to eligible small businesses
18 at up to and including five percent below the present
19 borrowing rate applicable to each specific business at
20 the time of the deposit of county funds in the institution.

§7-19-2. Legislative findings.

1 The Legislature finds that many small businesses
2 throughout the state are experiencing economic stagna-
3 tion or decline, that high interest rates have caused
4 small businesses in this state to suffer disproportionately
5 in profitability and competition and that such high
6 interest rates have fostered a serious increase in
7 unemployment. The linked deposit program provided
8 for by this article is intended to provide a countywide
9 availability of lower cost funds for lending purposes that
10 will materially contribute to the economic revitalization
11 of this state. Accordingly, it is declared to be the public
12 policy of the state to create through the linked deposit
13 program an availability of lower-cost funds to inject
14 needed capital into the business community, sustain or
15 improve business profitability and protect the jobs of
16 citizens of this state. This program is created to
17 supplement the state linked deposit program.

§7-19-3. Authority to invest; limitations on investment in linked deposits; loan cap.

1 County commissions are hereby authorized and
2 empowered, in addition to all other powers and duties
3 now conferred by law upon county commissions, to
4 invest in linked deposits: *Provided*, That at the time of
5 placement of the linked deposit not more than ten
6 percent of the county's total investment portfolio is so
7 invested. The amount of a reduced rate loan may not
8 exceed ten thousand dollars per job created or preserved
9 as determined by the agent, subject to the availability
10 of funds. This program is created to supplement the
11 state linked deposit program and the agent is authorized
12 to coordinate county linked deposits with the state
13 program.

§7-19-4. Applications for loan; priorities; loan package.

1 (a) An eligible lending institution that desires to
2 receive a linked deposit shall accept and review
3 applications for loans from eligible small businesses.
4 The lending institution shall apply all usual lending
5 standards to determine the credit worthiness of each
6 eligible small business making an application.

7 (b) An eligible small business shall certify on its loan
8 application that the reduced rate loan will be used
9 exclusively to create new jobs or preserve existing jobs
10 and employment opportunities. A reduced rate loan
11 shall not be used to refinance existing debt, unless such
12 action is done to prevent bankruptcy. Whoever know-
13 ingly makes a false statement concerning such applica-
14 tion shall be prohibited from participating in the linked
15 deposit loan program and shall be subject to the
16 penalties provided for in section eight of this article.

17 (c) In considering which eligible small businesses
18 should receive reduced rate loans, the eligible lending
19 institution shall give priority to businesses in areas
20 which are economically depressed and to the number of
21 jobs to be created or preserved by the receipt of such
22 loan.

23 (d) The eligible lending institution shall forward to
24 the agent a linked deposit loan package, in the form and
25 manner prescribed by the agent. The package shall
26 include such information as required by the agent,
27 including the amount of the loan requested and the
28 number of jobs to be created or sustained by each
29 eligible small business. The institution shall certify that
30 each applicant is an eligible small business, and shall
31 certify the present borrowing rate applicable to each
32 specific eligible business.

§7-19-5. Acceptance or rejection of loan package; deposit agreement.

1 (a) The agent may accept or reject a linked deposit
2 loan package or any portion thereof, based on the ratio
3 of county funds to be deposited to jobs to be sustained
4 or created.

5 (b) Upon acceptance of the linked deposit loan
6 package or any portion thereof, the agent may place
7 certificates of deposit with the eligible lending institu-
8 tion at up to and including five percent below current
9 market rates as determined by the agent. When
10 necessary, the agent may place certificates of deposit
11 prior to acceptance of a linked deposit loan package.

12 (c) The eligible lending institution shall enter into a
13 deposit agreement with the agent, which agreement
14 shall include requirements necessary to carry out the
15 purposes of this article. Such requirements shall reflect
16 the market conditions prevailing in the eligible lending
17 institution's lending area. The agreement may include
18 a specification of the period of time in which the lending
19 institution is to lend funds upon the placement of a
20 linked deposit and shall include provisions for the
21 certificates of deposit to be placed for up to two-year
22 maturities that may be renewed for up to an additional
23 two years. Interest shall be paid at the times determined
24 by the agent.

**§7-19-6. Rate of loan; certification and monitoring of
compliance; reports.**

1 (a) Upon the placement of a linked deposit with an
2 eligible lending institution, such institution is required
3 to lend such funds to each approved eligible small
4 business listed in the linked deposit loan package
5 required in subsection (d), section four of this article,
6 and in accordance with the deposit agreement required
7 by subsection (c), section five of this article. The loan
8 shall be at up to and including five percent below the
9 present borrowing rate applicable to each business. A
10 certification of compliance with this section shall be
11 required of the eligible lending institution in the form
12 and manner prescribed by the agent.

13 (b) The agent shall take any and all steps necessary
14 to implement the linked deposit program and monitor
15 compliance of eligible lending institutions and eligible
16 small businesses. The agent, the state treasurer and the
17 industrial development authority shall notify each other
18 at least quarterly of the names of the businesses

19 receiving financial assistance from their respective
20 programs.

21 By the first day of January, April, July and October
22 of each year, the agent shall report on the linked deposit
23 program from the preceding calendar quarter to the
24 county commission. The report shall set forth the linked
25 deposits made by the county under the program during
26 the quarter and shall include information regarding the
27 nature, terms and amounts of the loans upon which the
28 linked deposits were based and each small business to
29 which a loan was made.

§7-19-7. Liability of the county commission or its agent.

1 Neither the county commission or its agent is liable
2 in any manner to any eligible lending institution for
3 payment of the principal or interest on the loan to an
4 eligible small business. A delay in payment or default
5 on the part of an eligible small business does not in any
6 manner affect the deposit agreement between the
7 eligible lending institution and the county.

§7-19-8. Penalties for violation of article.

1 Any violation of this article shall be deemed a
2 misdemeanor and any person convicted thereof shall be
3 fined not less than one hundred nor more than five
4 hundred dollars and imprisoned in the county jail not
5 less than one month nor more than one year.

CHAPTER 102

(Com. Sub. for S. B. 184—By Mr. Tonkovich, Mr. President, and Senator Tucker)

[Passed February 26, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five and six, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eight, all relating to limitations of investment in linked deposits; acceptance or rejection of loan package; deposit agreement, rate of loan; certification and monitoring of compliance and reports; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-3. Limitations on investment in linked deposits.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-6. Rate of loan; certification and monitoring of compliance; report.

§12-1A-8. Penalties for violation of article.

§12-1A-3. Limitations on investment in linked deposits.

1 The state treasurer may invest in linked deposits:
2 *Provided*, That at the time of placement of the linked
3 deposit not more than ten percent of the state's total
4 investment portfolio is so invested. The total amount so
5 deposited at any one time shall not exceed, in the aggregate,
6 two hundred twenty-five million dollars, of which fifty
7 million dollars shall be provided for linked deposits to West
8 Virginia flood victims from the twenty-nine counties
9 eligible for federal disaster aid as listed by the federal
10 emergency management agency.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

1 (a) The state treasurer may accept or reject a linked
2 deposit loan package or any portion thereof, based on the
3 ratio of state funds to be deposited to jobs sustained or
4 created.

5 (b) The state treasurer shall reject any linked deposit
6 loan package if the small business requesting such loan is
7 not in good standing with the state tax department,
8 department of employment security and the workers'
9 compensation fund, and these agencies shall provide the
10 state treasurer with such information as to the standing of
11 each small business loan applicant, notwithstanding any
12 provision of this code to the contrary.

13 (c) Any linked deposit loan package that is being made
14 to refinance an existing debt, or any portion thereof, must
15 meet one of the following criteria:

16 (1) The small business can demonstrate in good faith

17 that it is experiencing a substantial loss in its current (fiscal
18 or calendar) tax year period;

19 (2) The small business recently experienced a natural
20 disaster and suffered unreimbursable casualty losses;

21 (3) The small business has filed to recover under the
22 federal bankruptcy act and meets the criteria in (1) above;
23 or

24 (4) The small business can provide compelling
25 information to the state treasurer that jobs will be saved
26 and/or created as a result of loan refinancing.

27 (d) Upon acceptance of the linked deposit loan package
28 or any portion thereof, the state treasurer may place
29 certificates of deposit with the eligible lending institution
30 at three percent below current market rates, as determined
31 and calculated by the state treasurer. Upon acceptance of
32 the linked deposit loan package for flood victims or any
33 portion thereof, the state treasurer may place certificates of
34 deposit with the eligible lending institution at five percent
35 below current market rates, as determined and calculated
36 by the state treasurer. When necessary, the treasurer may
37 place certificates of deposit prior to acceptance of a linked
38 deposit loan package.

39 (e) The eligible lending institution shall enter into a
40 deposit agreement with the state treasurer, which shall
41 include requirements necessary to carry out the purposes of
42 this article. Such requirements shall reflect the market
43 conditions prevailing in the eligible lending institution's
44 lending area. The agreement may include a specification of
45 the period of time in which the lending institution is to lend
46 funds upon the placement of a linked deposit and shall
47 include provisions for the certificates of deposit to be
48 placed for up to two-year maturities that may be renewed
49 for up to an additional two years. Interest shall be paid at
50 the times determined by the state treasurer.

**§12-1A-6. Rate of loan; certification and monitoring of
compliance; report.**

1 (a) Upon the placement of a linked deposit with an
2 eligible lending institution, such institution is required to
3 lend such funds to each approved eligible small business
4 listed in the linked deposit loan package required in
5 subsection (d), section four of this article, and in accordance

6 with the deposit agreement required by subsection (e),
7 section five of this article. The loan shall be at three percent
8 below the present borrowing rate applicable to each
9 business. The loan shall be at five percent below the present
10 borrowing rate applicable to each flood victim. A
11 certification of compliance with this section in the form and
12 manner as prescribed by the state treasurer shall be
13 required of the eligible lending institution.

14 (b) The state treasurer shall take any and all steps
15 necessary to implement the linked deposit program and
16 monitor compliance of eligible lending institutions and
17 eligible small businesses. The state treasurer and the
18 industrial development authority shall notify each other at
19 least quarterly of the names of the businesses receiving
20 financial assistance from their respective programs.

21 By the first day of January, April, July and October of
22 each year, the treasurer shall report on the linked deposit
23 program for the preceding calendar quarter to the governor
24 and to the joint committee on government and finance. The
25 reports shall set forth the linked deposits made by the state
26 treasurer under the program during the quarter and shall
27 include information regarding the nature, terms and
28 amounts of the loans upon which the linked deposits were
29 based and the eligible small business to which the loans
30 were made.

§12-1A-8. Penalties for violation of article.

1 Any violation of this article shall be deemed a
2 misdemeanor and any person convicted thereof shall be
3 fined not less than one hundred nor more than five hundred
4 dollars and imprisoned in the county jail not less than one
5 month nor more than one year.

CHAPTER 103

(Com. Sub. for H. B. 1140—By Delegate Flanigan and Delegate McNeely)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, eight, nine
and nine-a, article one, chapter fifty of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, relating to magistrates and magistrates staffs; establishing number of magistrates per county and new positions; establishing new total number of magistrate court deputy clerks in the state; and setting salaries of magistrates and magistrate staffs.

Be it enacted by the Legislature of West Virginia:

That sections two, three, eight, nine and nine-a, 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.

§50-1-2. Number of magistrates.

§50-1-3. Salary of magistrates.

§50-1-8. Magistrate court clerks; salary; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

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

§50-1-2. Number of magistrates.

1 In each county which has less than thirty thousand in
2 population there shall be elected two magistrates; except
3 that in the county of Putnam there shall be elected three
4 magistrates. In each county which has thirty thousand
5 or more in population but less than sixty thousand in
6 population there shall be elected three magistrates;
7 except that in the counties of McDowell and Fayette
8 there shall be elected four magistrates, with the fourth
9 magistrate position hereby created for Fayette County
10 not to be subject to being filled by prior appointment,
11 but with service to begin in January, one thousand nine
12 hundred eighty-seven, after initial election at general
13 election in the fall of one thousand nine hundred eighty-
14 six, and in the county of Brooke there shall be elected
15 two magistrates. In each county which has sixty
16 thousand or more in population but less than one
17 hundred five thousand in population there shall be
18 elected four magistrates; except that in the counties of
19 Raleigh and Mercer there shall be elected five magis-
20 trates with the fifth magistrate position hereby created
21 for Mercer County to be subject to being filled by prior
22 appointment on and after the first day of July, one

23 thousand nine hundred eighty-six, and until the subse-
24 quent general election therefor. In each county which
25 has one hundred five thousand or more in population but
26 less than two hundred thousand in population there shall
27 be elected seven magistrates. In each county which has
28 two hundred thousand or more in population there shall
29 be elected ten magistrates. For the purpose of this
30 article, the population of each county shall be considered
31 to be the population as determined by the last preceding
32 census taken under the authority of the United States
33 government. No change in the number of magistrates
34 caused by the publication of more recent such census
35 figures shall be effective until the next regular election
36 for such office occurring after the year of such publi-
37 cation.

§50-1-3. Salary of magistrates.

1 The salary of each magistrate shall be paid by the
2 state. Beginning on the first day of July, one thousand
3 nine hundred eighty-four, magistrates who serve less
4 than ten thousand in population shall be paid annual
5 salaries of seventeen thousand two hundred fifty dollars;
6 magistrates who serve ten thousand or more in popula-
7 tion but less than fifteen thousand in population shall
8 be paid annual salaries of twenty thousand six hundred
9 twenty-five dollars: *Provided*, That magistrates in the
10 county of Putnam shall be paid annual salaries of twenty
11 thousand six hundred twenty-five dollars. Magistrates
12 who serve fifteen thousand or more in population shall
13 be paid annual salaries of twenty-five thousand one
14 hundred twenty-five dollars: *Provided, however*, That
15 magistrates in the counties of Boone, Preston, Jefferson,
16 Mercer and Fayette shall be paid annual salaries of
17 twenty-five thousand one hundred twenty-five dollars.
18 For the purpose of determining the population served
19 by each magistrate, the number of magistrates autho-
20 rized for each county shall be divided into the population
21 of each county. Magistrates shall be paid once a month.

***§50-1-8. Magistrate court clerks; salary; duties; duties of circuit clerk.**

1 In each county having three or more magistrates the

*NOTE: This section was also amended by H. B. 1478, which passed subsequent to this act.

2 judge of the circuit court or the chief judge thereof, if
3 there is more than one judge of the circuit court, shall
4 appoint a magistrate court clerk. In all other counties
5 such judge may appoint a magistrate court clerk or may
6 by rule require the duties of the magistrate court clerk
7 to be performed by the clerk of the circuit court, in
8 which event such circuit court clerk shall be entitled to
9 additional compensation in the amount of two thousand
10 five hundred dollars per year. The magistrate court
11 clerk shall serve at the will and pleasure of such circuit
12 judge.

13 Magistrate court clerks shall be paid a monthly salary
14 by the state. Beginning on the first day of July, one
15 thousand nine hundred eighty-four, magistrate court
16 clerks serving magistrates who serve less than ten
17 thousand in population shall be paid up to nine hundred
18 eighty-one dollars per month; magistrate court clerks
19 serving magistrates who serve ten thousand or more in
20 population but less than fifteen thousand in population
21 shall be paid up to one thousand two hundred forty-one
22 dollars per month: *Provided*, That the magistrate court
23 clerk in the county of Putnam shall be paid up to one
24 thousand two hundred forty-one dollars per month; and
25 magistrate court clerks serving magistrates who serve
26 fifteen thousand or more in population shall be paid up
27 to one thousand five hundred sixteen dollars per month:
28 *Provided, however*, That the magistrate court clerks in
29 the counties of Boone, Preston, Jefferson, Mercer,
30 Fayette and Raleigh shall be paid up to one thousand
31 five hundred sixteen dollars per month. For the purpose
32 of determining the population served by each magis-
33 trate, the number of magistrates authorized for each
34 county shall be divided into the population of each
35 county. The salary of the magistrate court clerk shall
36 be established by the judge of the circuit court, or the
37 chief judge thereof if there is more than one judge of
38 the circuit court, within the limits set forth in this
39 section.

40 In addition to other duties as may be imposed by the
41 provisions of this chapter or by the rules of the supreme
42 court of appeals or the judge of the circuit court, or the

43 chief judge thereof if there is more than one judge of
44 the circuit court, it shall be the duty of the magistrate
45 court clerk to establish and maintain appropriate
46 dockets and records in a centralized system for the
47 magistrate court, to assist in the preparation of such
48 reports as may be required of the court and to carry out
49 on behalf of the magistrates, or chief magistrate if a
50 chief magistrate is appointed, the administrative duties
51 of the court.

52 The magistrate court clerk or, if there is no magis-
53 trate court clerk in the county, the clerk of the circuit
54 court shall have the authority to issue all manner of civil
55 process and to require the enforcement of subpoenas and
56 subpoenas duces tecum in magistrate court.

***§50-1-9. Magistrate assistants; salary; duties.**

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

12 A magistrate assistant shall have such duties, clerical
13 or otherwise, as may be assigned by the magistrate and
14 as may be prescribed by the rules of the supreme court
15 of appeals or the judge of the circuit court, or the chief
16 judge thereof if there is more than one judge of the
17 circuit court. In addition to these duties, magistrate
18 assistants shall perform and be accountable to the
19 magistrate court clerks with respect to the following
20 duties:

- 21 (1) The preparation of summons in civil actions;
- 22 (2) The assignment of civil actions to the various
23 magistrates;
- 24 (3) The collection of all costs, fees, fines, forfeitures

*NOTE: This section was also amended by H. B. 1478, which passed subsequent to this act.

25 and penalties which may be payable to the court;

26 (4) The submission of such moneys, along with an
27 accounting thereof to appropriate authorities as pro-
28 vided by law;

29 (5) The daily disposition of closed files which are to
30 be located in the magistrate clerk's office;

31 (6) All duties related to the gathering of information
32 and documents necessary for the preparation of admi-
33 nistrative reports and documents required by the rules
34 of the supreme court of appeals or the judge of the
35 circuit court, or the chief judge thereof if there is more
36 than one judge of the circuit court;

37 (7) All duties relating to the notification, certification
38 and payment of jurors serving pursuant to the terms of
39 this chapter;

40 (8) All other duties or responsibilities whereby the
41 magistrate assistant shall be accountable to the magis-
42 trate court clerk as the magistrate shall determine.

43 Magistrates assistants shall be paid a monthly salary
44 by the state. Beginning on the first day of July, one
45 thousand nine hundred eighty-four, magistrate assist-
46 ants serving magistrates who serve less than ten
47 thousand in population shall be paid up to seven
48 hundred eighty-eight dollars per month; magistrate
49 assistants serving magistrates who serve ten thousand
50 or more in population but less than fifteen thousand in
51 population shall be paid up to nine hundred seventeen
52 dollars per month: *Provided*, That magistrate assistants
53 in the county of Putnam shall be paid up to nine
54 hundred seventeen dollars per month; and magistrate
55 assistants serving magistrates who serve fifteen thou-
56 sand or more in population shall be paid up to one
57 thousand forty-five dollars per month: *Provided, how-*
58 *ever*, That magistrate assistants in the counties of Boone,
59 Preston, Jefferson, Mercer, Fayette and Raleigh shall be
60 paid up to one thousand forty-five dollars per month.
61 For the purpose of determining the population served
62 by each magistrate, the number of magistrates autho-
63 rized for each county shall be divided into the population

64 of each county. The salary of the magistrate assistant
65 shall be established by the magistrate within the limits
66 set forth in this section.

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

1 Whenever required by work load and upon the
2 recommendation of the judge of the circuit court, or the
3 chief judge thereof if there is more than one judge of
4 the circuit court, the supreme court of appeals may by
5 rule provide for the appointment of magistrate court
6 deputy clerks, not to exceed fifty-one in number. Such
7 magistrate court deputy clerks shall be appointed by the
8 judge of the circuit court, or the chief judge thereof if
9 there is more than one judge of the circuit court, with
10 such appointee to serve at his will and pleasure under
11 the immediate supervision of the magistrate court clerk.
12 Such magistrate court deputy clerk shall have such
13 duties, clerical or otherwise, as may be assigned by the
14 magistrate court clerk and as may be prescribed by the
15 rules of the supreme court of appeals or the judge of the
16 circuit court, or the chief judge thereof if there is more
17 than one judge of the circuit court. Such magistrate
18 court deputy clerks shall also have authority to exercise
19 the power and perform the duties of the magistrate
20 court clerk as may be delegated or assigned by such
21 magistrate court clerk.

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

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

CHAPTER 104

(Com. Sub. for H. B. 1478—By Delegate Murensky and Delegate Neal)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections eight, nine and nine-b, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the judicial system and magistrate courts; providing for an increase in the maximum allowable salaries of magistrate court clerks, magistrate assistants and magistrate court deputy clerks in specified amounts; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That sections eight, nine and nine-b, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-8. Magistrate court clerks; salary; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-9b. Putnam and Raleigh counties—Salaries of clerks, deputy clerks, magistrate assistants, for certain periods prior to July 1, 1986.

*§50-1-8. Magistrate court clerks; salary; duties; duties of circuit clerk.

1 In each county having three or more magistrates the
 2 judge of the circuit court or the chief judge thereof, if
 3 there is more than one judge of the circuit court, shall
 4 appoint a magistrate court clerk. In all other counties
 5 such judge may appoint a magistrate court clerk or may
 6 by rule require the duties of the magistrate court clerk
 7 to be performed by the clerk of the circuit court, in
 8 which event such circuit court clerk shall be entitled to
 9 additional compensation in the amount of two thousand
 10 five hundred dollars per year. The magistrate court
 11 clerk shall serve at the will and pleasure of such circuit
 12 judge.

13 Magistrate court clerks shall be paid a monthly salary
 14 by the state. Beginning on the first day of July, one

*NOTE: This section was also amended by H. B. 1140, which passed prior to this act.

15 thousand nine hundred eighty-six, magistrate court
16 clerks serving magistrates who serve less than ten
17 thousand in population shall be paid up to one thousand
18 thirty-one dollars per month; magistrate court clerks
19 serving magistrates who serve ten thousand or more in
20 population but less than fifteen thousand in population
21 shall be paid up to one thousand two hundred ninety-
22 one dollars per month: *Provided*, That the magistrate
23 court clerk in the county of Putnam shall be paid up to
24 one thousand two hundred ninety-one dollars per month;
25 and magistrate court clerks serving magistrates who
26 serve fifteen thousand or more in population shall be
27 paid up to one thousand five hundred sixty-six dollars
28 per month: *Provided, however*, That the magistrate court
29 clerks in the counties of Boone, Preston, Jefferson,
30 Mercer, Fayette and Raleigh shall be paid up to one
31 thousand five hundred sixty-six dollars per month. For
32 the purpose of determining the population served by
33 each magistrate, the number of magistrates authorized
34 for each county shall be divided into the population of
35 each county. The salary of the magistrate court clerk
36 shall be established by the judge of the circuit court, or
37 the chief judge thereof if there is more than one judge
38 of the circuit court, within the limits set forth in this
39 section.

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

52 The magistrate court clerk or, if there is no magis-
53 trate court clerk in the county, the clerk of the circuit
54 court shall have the authority to issue all manner of civil
55 process and to require the enforcement of subpoenas and

56 subpoenas duces tecum in magistrate court.

***§50-1-9. Magistrate assistants; salary; duties.**

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

12 A magistrate assistant shall have such duties, clerical
13 or otherwise, as may be assigned by the magistrate and
14 as may be prescribed by the rules of the supreme court
15 of appeals or the judge of the circuit court, or the chief
16 judge thereof if there is more than one judge of the
17 circuit court. In addition to these duties, magistrate
18 assistants shall perform and be accountable to the
19 magistrate court clerks with respect to the following
20 duties:

- 21 (1) The preparation of summons in civil actions;
- 22 (2) The assignment of civil actions to the various
23 magistrates;
- 24 (3) The collection of all costs, fees, fines, forfeitures
25 and penalties which may be payable to the court;
- 26 (4) The submission of such moneys, along with an
27 accounting thereof to appropriate authorities as pro-
28 vided by law;
- 29 (5) The daily disposition of closed files which are to
30 be located in the magistrate clerk's office;
- 31 (6) All duties related to the gathering of information
32 and documents necessary for the preparation of admini-
33 strative reports and documents required by the rules
34 of the supreme court of appeals or the judge of the
35 circuit court, or the chief judge thereof if there is more
36 than one judge of the circuit court;

*NOTE: This section was also amended by H. B. 1140, which passed prior to this act.

37 (7) All duties relating to the notification, certification
38 and payment of jurors serving pursuant to the terms of
39 this chapter;

40 (8) All other duties or responsibilities whereby the
41 magistrate assistant shall be accountable to the magis-
42 trate court clerk as the magistrate shall determine.

43 Magistrate assistants shall be paid a monthly salary
44 by the state. Beginning on the first day of July, one
45 thousand nine hundred eighty-six, magistrate assistants
46 serving magistrates who serve less than ten thousand in
47 population shall be paid up to eight hundred thirty-eight
48 dollars per month; magistrate assistants serving mag-
49 istrates who serve ten thousand or more in population
50 but less than fifteen thousand in population shall be paid
51 up to nine hundred sixty-seven dollars per month:
52 *Provided*, That magistrate assistants in the county of
53 Putnam shall be paid up to nine hundred sixty-seven
54 dollars per month; and magistrate assistants serving
55 magistrates who serve fifteen thousand or more in
56 population shall be paid up to one thousand ninety-five
57 dollars per month: *Provided, however*, That magistrate
58 assistants in the counties of Boone, Preston, Jefferson,
59 Mercer, Fayette and Raleigh shall be paid up to one
60 thousand ninety-five dollars per month. For the purpose
61 of determining the population served by each magis-
62 trate, the number of magistrates authorized for each
63 county shall be divided into the population of each
64 county. The salary of the magistrate assistant shall be
65 established by the magistrate within the limits set forth
66 in this section.

**§50-1-9b. Putnam and Raleigh counties—Salaries of
clerks, deputy clerks, magistrate assistants,
for certain periods prior to July 1, 1986.**

1 (a) The Legislature finds and declares:

2 (1) That during the regular session of the Legislature,
3 one thousand nine hundred eighty, it adopted certain
4 amendments to sections two, three, eight, nine and
5 eleven of this article in an act designated chapter eighty,
6 acts of the Legislature, regular session, one thousand
7 nine hundred eighty;

8 (2) That included within the provisions of that act
9 were provisions specifically increasing the number of
10 magistrates for the counties of Putnam and Raleigh
11 whereby the Legislature provided for the election of
12 three magistrates for the county of Putnam and five
13 magistrates for the county of Raleigh;

14 (3) That it has come to the attention of the Legislature
15 that the fact of increasing the number of magistrates in
16 the counties of Putnam and Raleigh has been inter-
17 preted as necessitating a decrease in the respective
18 salaries of the magistrate court clerks, magistrate
19 assistants and magistrate court deputy clerks, in those
20 counties effective the first day of January, one thousand
21 nine hundred eighty-one; and

22 (4) That it was not the intent of the Legislature in
23 enacting the provisions of chapter eighty, acts of the
24 Legislature, regular session, one thousand nine hundred
25 eighty, to reduce the salaries of magistrate court clerks,
26 magistrate assistants and magistrate court deputy
27 clerks in the counties of Putnam and Raleigh.

28 Therefore, in view of the foregoing findings, it is the
29 intent of the Legislature in enacting this section to
30 restore the respective salaries of the magistrate court
31 clerks, magistrate assistants and magistrate court
32 deputy clerks in the counties of Putnam and Raleigh to
33 those sums which were applicable to those various
34 positions prior to the first day of January, one thousand
35 nine hundred eighty-one, retroactively to that date.

36 (b) In view of the foregoing findings and purposes,
37 effective the first day of January, one thousand nine
38 hundred eighty-one, the respective salaries for magis-
39 trate court clerks, magistrate assistants and magistrate
40 court deputy clerks in the counties of Putnam and
41 Raleigh shall be as follows:

42 (1) The salary for the magistrate court clerk in the
43 county of Putnam shall be up to one thousand twenty-
44 six dollars per month;

45 (2) The salary for the magistrate court clerk in the
46 county of Raleigh shall be up to one thousand two

47 hundred fifty-four dollars per month;

48 (3) The salary for each magistrate assistant in the
49 county of Putnam shall be up to seven hundred forty-
50 one dollars per month;

51 (4) The salary for each magistrate assistant in the
52 county of Raleigh shall be up to eight hundred fifty-five
53 dollars per month; and

54 (5) The salaries of the various magistrate court
55 deputy clerks for the counties of Putnam and Raleigh
56 shall be in amounts up to and not exceeding the amounts
57 paid to the magistrate assistants in those respective
58 counties.

59 (c) Effective the first day of July, one thousand nine
60 hundred eighty-six, the maximum allowable salaries of
61 magistrate court clerks, magistrate assistants and
62 magistrate court deputy clerks in the counties of
63 Putnam and Raleigh shall be the amounts set forth in
64 sections eight, nine and nine-a of this article.

CHAPTER 105

(H. B. 1084—By Delegate Casey and Delegate Reed)

[Passed March 3, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing clerks of county commissions to accept applications for marriage licenses and to issue marriage licenses at anytime the clerk's office is officially open for business.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.

§48-1-6. Application for license; requirements for issuance of license.

1 Every license for marriage shall be issued by the clerk
2 of the county commission of the county in which either
3 party usually resides, except that where both parties are
4 nonresidents of the state of West Virginia, the license
5 shall be issued by the clerk of the county commission
6 of the county in which application is made. Such license
7 shall be issued not sooner than three days after the filing
8 with said clerk of a written application therefor. The
9 day upon which such application is filed shall be counted
10 as the first day, but two full days shall elapse after the
11 day of such filing before the license shall be issued.
12 Before any such license is issued each applicant therefor
13 shall file with the clerk a certificate or certificates from
14 any physician duly licensed in the state, stating that
15 each party thereto has been given such examination,
16 including a standard serological test, as may be
17 necessary for the discovery of syphilis, made not more
18 than thirty days prior to the date on which such license
19 is issued, and stating that in the opinion of the physician
20 the person therein named either is not infected with
21 syphilis or, if so infected, is not in the state of the disease
22 which is or may later become communicable. Such
23 examinations and tests as are required hereunder may
24 be given as provided by section nineteen, article four,
25 chapter sixteen of this code.

26 The application for a marriage license shall contain
27 a statement of the full names of both parties, their social
28 security account numbers, and their respective ages and
29 their places of birth and residence. It shall be signed by
30 both of the parties to the contemplated marriage, under
31 oath before the clerk of the county commission or before
32 a person authorized to administer oaths under the laws
33 of this state. At the time of the execution of such
34 application, the clerk, or the person administering the
35 oath to the applicants, shall require some evidence of the
36 age of each of the applicants. Evidence of the age of each
37 applicant may be in the form of a certified or photostatic
38 copy of a birth certificate, a voter's registration
39 certificate, an operator's or chauffeur's license, an

40 affidavit of both parents or legal guardian of the
41 applicant or other good and sufficient evidence of such
42 age. Where such an affidavit is relied upon as evidence
43 of the age of an applicant, and one parent is dead, the
44 affidavit of the surviving parent or of the guardian of
45 the applicant shall suffice; if both parents are dead, the
46 affidavit of the guardian of the applicant shall suffice.
47 If the parents of the applicant are living separate and
48 apart, the affidavit of the parent having custody of the
49 applicant shall suffice. Such application shall be
50 recorded in the register of marriages provided for in
51 section eleven of this article. The date of the filing of
52 the application shall be noted in said register, which
53 notation, or a certified copy thereof, shall be legal
54 evidence of the facts therein contained.

55 To the extent otherwise provided by section six-c of
56 this article, the provisions of this section shall not apply.
57 Applications for licenses may be received and licenses
58 may be issued by the clerk of the county commission at
59 anytime his office is officially open for the conduct of
60 business.

CHAPTER 106

(S. B. 714—By Senators Chafin, Rogers, Jones, Ash, Cook, Holliday,
Jarrell, Kaufman, Shaw, Stacy, Tucker and Yanero)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, nine and fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fourteen of said chapter by adding thereto a new section, designated section twelve-a; to amend article sixteen of said chapter by adding thereto a new section, designated section eight-a; to amend and reenact section two, article twenty, chapter thirty-three of said code; to further amend said chapter thirty-three by adding thereto two new articles, designated articles twenty-b and twenty-c; and to amend chapter fifty-five of said code by adding thereto a new article, designated article seven-b, all relating

generally to the comprehensive medical professional liability and malpractice insurance act; conduct of business of the state board of medicine; officers of such board and their compensation; meetings and proceedings of such board to be public with certain exceptions; records of such board and expungement thereof; confidentiality of such records and certain exceptions thereto including disclosure upon court order; criminal penalties for unauthorized disclosure; applicability of physician-patient privilege; professional discipline of physicians and podiatrists; mandatory investigations; reporting of information to such board pertaining to professional malpractice and incompetence required; civil penalties for failure to report; grounds for license denial and discipline; investigations allowed; physical and mental examinations; disciplinary hearings; sanctions imposed by such board including civil penalties; judicial review; reporting by board; reapplication after disciplinary action; immunity from civil and criminal liability; voluntary limitations on license; probable cause determinations required and public proceedings thereafter; suspension and revocation of license proceedings against osteopathic physicians; mandatory investigations by the board of osteopathy; reporting of information to such board pertaining to professional malpractice and incompetence; civil penalties for failure to report; probable cause determinations by such board and public proceedings thereafter; suspension and revocation of license proceedings against chiropractors; mandatory investigations by the board of chiropractic examiners; reporting of information to such board pertaining to professional malpractice and incompetence; civil penalties for failure to report; probable cause determinations by such board and public proceedings thereafter; application of article pertaining to rates and rating organizations to exclude malpractice insurance rates and rating organizations in certain provisions; rate making for malpractice insurance; rate filings for malpractice insurance and information to be included therein; waiting period for such filings; commissioner's disapproval of such filings during waiting period and notice and hearings thereon; disapproval of filings subsequent to waiting period and notice and hearings thereon; hearings on filings upon request by persons aggrieved by such filings; public hearings

required on certain filings; rating organizations for malpractice insurance to be licensed and requirements therefor; legislative rules to be promulgated to permit subscribing to such rating organizations; certain policies and rules of such rating organizations prohibited; cooperative activities among such rating organizations and review thereof; purchase of certain services by such rating organizations; annual review of rates by commissioner and legislative rules establishing procedures for such review; legislative rules establishing procedures for submission of certain information by malpractice insurers; penalties for failure to submit such information; annual report of commissioner on such insurers and information pertaining thereto; studies by the commissioner and reports thereon; cancellation and nonrenewal of malpractice insurance policies void except upon certain reasons; reasons for such actions to be specified in notices to insured; notice periods for such cancellation or nonrenewal; hearings upon cancellation and nonrenewal; legislative findings and declaration of purpose of act; definitions of certain terms; elements of proof in medical professional liability actions; statute of limitations; ad damnum clause not to allege a specific dollar amount; mandatory pretrial procedures; frivolous claims and defenses; expert witness testimony and foundation therefor; limit on damages recoverable for noneconomic loss; applicability of article; and severability.

Be it enacted by the Legislature of West Virginia:

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

Chapter

30. Professions and Occupations.

33. Insurance.**55. Actions, Suits and Arbitration; Judicial Sale.****CHAPTER 30. PROFESSIONS AND OCCUPATIONS.****ARTICLE**

- 3. West Virginia Medical Practice Act.**
- 14. Osteopathic Physicians and Surgeons.**
- 16. Chiropractors.**

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

- §30-3-6. Conduct of business of West Virginia board of medicine; meetings; officers; compensation; expenses; quorum.**
- §30-3-9. Records of board; expungement; examination; confidentiality; release of records; criminal penalties for unauthorized disclosure; physician-patient privilege.**
- §30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigation; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.**

§30-3-6. Conduct of business of West Virginia board of medicine; meetings; officers; compensation; expenses; quorum.

1 Every two years the board shall elect from among its
2 members a president and vice president. Regular meetings
3 shall be held as scheduled by the rules and regulations of the
4 board. Special meetings of the board may be called by the
5 joint action of the president and vice president or by any
6 three members of the board on seven days' prior written
7 notice by mail or, in case of emergency, on two days' notice
8 by telephone. With the exception of the state director of
9 health, members of the board shall receive one hundred
10 dollars for each day actually spent in attending the sessions
11 of the board or its committees. A board member shall be
12 reimbursed for all reasonable and necessary expenses
13 actually incurred when a meeting is held in a location that is
14 removed from the member's place of residence.

15 A majority of the membership of the board constitutes a
16 quorum for the transaction of business, and business is
17 transacted by a majority vote of a quorum, except for

18 disciplinary actions which shall require the affirmative
19 vote of not less than five members or a majority vote of those
20 present, whichever is greater.

21 Meetings of the board shall be held in public session,
22 except that the board may hold closed sessions to prepare,
23 approve, grade or administer examinations. Disciplinary
24 proceedings, prior to a finding of probable cause as
25 provided in subsection (o), section fourteen of this article,
26 shall be held in closed sessions, unless the party subject to
27 discipline requests that the hearing be held in public
28 session.

**§30-3-9. Records of board; expungement; examination;
confidentiality; release of records; criminal
penalties for unauthorized disclosure; physician-
patient privilege.**

1 (a) The board shall maintain a permanent record of the
2 names of all physicians and podiatrists licensed or
3 otherwise lawfully practicing in this state and of all persons
4 applying to be so licensed to practice, along with an
5 individual historical record for each such individual
6 containing reports and all other information furnished the
7 board under this article or otherwise. Such record may
8 include, in accordance with rules established by the board,
9 additional items relating to the individual's record of
10 professional practice that will facilitate proper review of
11 such individual's professional competence.

12 (b) Upon a determination by the board that any report
13 submitted to it is without merit, the report shall be
14 expunged from the individual's historical record.

15 (c) A physician, podiatrist or applicant, or authorized
16 representative thereof, has the right, upon request, to
17 examine his own individual historical record maintained by
18 the board pursuant to this article and to place into such
19 record a statement of reasonable length of his own view of
20 the correctness or relevance of any information existing in
21 such record. Such statement shall at all times accompany
22 that part of the record in contention.

23 (d) A physician, podiatrist or applicant has the right to
24 seek through court action the amendment or expungement
25 of any part of his historical record.

26 (e) A physician, podiatrist or applicant shall be

27 provided written notice within thirty days of the placement
28 and substance of any information in his individual
29 historical record that pertains to him and that was not
30 submitted to the board by him.

31 (f) Except for information relating to biographical
32 background, education, professional training and practice,
33 prior disciplinary action by any entity and information
34 contained on the licensure application, the board shall
35 expunge information in an individual's historical record
36 unless it has initiated a proceeding for a hearing upon such
37 information within two years of the placing of the
38 information into the historical record.

39 (g) Any reports, information or records received and
40 maintained by the board pursuant to this article, including
41 any such material received or developed by the board
42 during any investigation or hearing, shall be strictly
43 confidential. The board may only disclose any such
44 confidential information in the following circumstances:

45 (1) In an examination or disciplinary hearing
46 sanctioned by the board or in any subsequent trial or appeal
47 of a board action or order;

48 (2) To physician or podiatrist licensing or disciplinary
49 authorities of other jurisdictions, medical peer review
50 committees, hospital governing bodies or other hospital or
51 medical staff committees located within or outside this
52 state which are concerned with granting, limiting or
53 denying a physician or podiatrist hospital privileges:
54 *Provided*, That the board shall include along with any such
55 disclosure an indication as to whether or not such
56 information has been substantiated;

57 (3) Pursuant to an order of a court of competent
58 jurisdiction;

59 (4) To qualified personnel for bona fide research or
60 educational purposes, if personally identifiable
61 information relating to any patient or physician is first
62 deleted; and

63 (5) Pursuant to the provisions of subsection (o), section
64 fourteen of this article.

65 (h) Orders of the board relating to disciplinary action
66 against a physician or podiatrist are public information.

67 (i) Confidential information received, maintained or
68 developed by the board or disclosed by the board to others

69 as provided for in this article shall not be available for
70 discovery or court subpoena or be introduced into evidence
71 in any medical professional liability action or other action
72 for damages arising out of the provision of or failure to
73 provide health care services: *Provided*, That following the
74 final action of the board in any disciplinary proceeding,
75 such information may be released upon order of a court in a
76 pending medical professional liability action upon a
77 showing that the party seeking such information has
78 substantial need for such information and would otherwise
79 be unable, without undue hardship, to obtain the
80 substantial equivalent of the information.

81 (j) Any person who discloses confidential information
82 possessed by the board in violation of the provisions of this
83 article is guilty of a misdemeanor, and, upon conviction
84 thereof, shall be fined not more than one thousand dollars,
85 or imprisoned in the county jail not more than one year, or
86 both fined and imprisoned.

87 (k) Any physician-patient privilege does not apply in
88 any investigation or proceeding by the board or by a
89 medical peer review committee or by a hospital governing
90 board with respect to relevant hospital medical records,
91 while any of the aforesaid are acting within the scope of
92 their authority: *Provided*, That the disclosure of any
93 information pursuant to this provision shall not be
94 considered a waiver of any such privilege in any other
95 proceeding.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings
3 based on information received from medical peer review
4 committees, physicians, podiatrists, hospital

5 administrators, professional societies and others.

6 The board shall initiate investigations as to professional
7 incompetence or other reasons for which a licensed
8 physician or podiatrist may be adjudged unqualified if the
9 board receives notice that five or more judgments or
10 settlements arising from medical professional liability have
11 been rendered or made against such physician or podiatrist.

12 (b) Upon request of the board, any medical peer review
13 committee in this state shall report any information that
14 may relate to the practice or performance of any physician
15 or podiatrist known to that medical peer review committee.
16 Copies of such requests for information from a medical peer
17 review committee may be provided to the subject physician
18 or podiatrist if, in the discretion of the board, the provision
19 of such copies will not jeopardize the board's investigation.
20 In the event that copies are so provided, the subject
21 physician or podiatrist is allowed fifteen days to comment
22 on the requested information and such comments must be
23 considered by the board.

24 After the completion of a hospital's formal disciplinary
25 procedure and after any resulting legal action, the chief
26 executive officer of such hospital shall report in writing to
27 the board within sixty days the name of any member of the
28 medical staff or any other physician or podiatrist practicing
29 in the hospital whose hospital privileges have been revoked,
30 restricted, reduced or terminated for any cause, including
31 resignation, together with all pertinent information
32 relating to such action. The chief executive officer shall also
33 report any other formal disciplinary action taken against
34 any physician or podiatrist by the hospital upon the
35 recommendation of its medical staff relating to professional
36 ethics, medical incompetence, medical malpractice, moral
37 turpitude or drug or alcohol abuse. Temporary suspension
38 for failure to maintain records on a timely basis or failure to
39 attend staff or section meetings need not be reported.

40 Any professional society in this state comprised primarily
41 of physicians or podiatrists which takes formal disciplinary
42 action against a member relating to professional ethics,
43 professional incompetence, professional malpractice,
44 moral turpitude or drug or alcohol abuse, shall report in
45 writing to the board within sixty days of a final decision the
46 name of such member, together with all pertinent

47 information relating to such action.

48 Every person, partnership, corporation, association,
49 insurance company, professional society or other
50 organization providing professional liability insurance to a
51 physician or podiatrist in this state shall submit to the
52 board the following information within thirty days from
53 any judgment, dismissal or settlement of a civil action or of
54 any claim involving the insured: The date of any judgment,
55 dismissal or settlement; whether any appeal has been taken
56 on the judgment, and, if so, by which party; the amount of
57 any settlement or judgment against the insured; and such
58 other information as the board may require.

59 Within thirty days after a person known to be a physician
60 or podiatrist licensed or otherwise lawfully practicing
61 medicine and surgery or podiatry in this state or applying to
62 be so licensed is convicted of a felony under the laws of this
63 state, or of any crime under the laws of this state involving
64 alcohol or drugs in any way, including any controlled
65 substance under state or federal law, the clerk of the court
66 of record in which the conviction was entered shall forward
67 to the board a certified true and correct abstract of record of
68 the convicting court. The abstract shall include the name
69 and address of such physician or podiatrist or applicant, the
70 nature of the offense committed and the final judgment and
71 sentence of the court.

72 Upon a determination of the board that there is probable
73 cause to believe that any person, partnership, corporation,
74 association, insurance company, professional society or
75 other organization has failed or refused to make a report
76 required by this subsection, the board shall provide written
77 notice to the alleged violator stating the nature of the
78 alleged violation and the time and place at which the
79 alleged violator shall appear to show good cause why a civil
80 penalty should not be imposed. The hearing shall be
81 conducted in accordance with the provisions of article five,
82 chapter twenty-nine-a of this code. After reviewing the
83 record of such hearing, if the board determines that a
84 violation of this subsection has occurred, the board shall
85 assess a civil penalty of not less than one thousand dollars
86 nor more than ten thousand dollars against such violator.
87 Anyone so assessed shall be notified of the assessment in
88 writing and the notice shall specify the reasons for the

89 assessment. If the violator fails to pay the amount of the
90 assessment to the board within thirty days, the attorney
91 general may institute a civil action in the circuit court of
92 Kanawha County to recover the amount of the assessment.
93 In any such civil action, the court's review of the board's
94 action shall be conducted in accordance with the provisions
95 of section four, article five, chapter twenty-nine-a of this
96 code.

97 Any person may report to the board relevant facts about
98 the conduct of any physician or podiatrist in this state
99 which in the opinion of such person amounts to professional
100 malpractice or professional incompetence.

101 The board shall provide forms for filing reports pursuant
102 to this section. Reports submitted in other forms shall be
103 accepted by the board.

104 The filing of a report with the board pursuant to any
105 provision of this article, any investigation by the board or
106 any disposition of a case by the board does not preclude any
107 action by a hospital, other health care facility or
108 professional society comprised primarily of physicians or
109 podiatrists to suspend, restrict or revoke the privileges or
110 membership of such physician or podiatrist.

111 (c) The board may deny an application for license or
112 other authorization to practice medicine and surgery or
113 podiatry in this state and may discipline a physician or
114 podiatrist licensed or otherwise lawfully practicing in this
115 state who, after a hearing, has been adjudged by the board
116 as unqualified due to any of the following reasons:

117 (1) Attempting to obtain, obtaining, renewing or
118 attempting to renew a license to practice medicine and
119 surgery or podiatry by bribery, fraudulent
120 misrepresentation or through known error of the board.

121 (2) Being found guilty of a crime in any jurisdiction,
122 which offense is a felony, involves moral turpitude or
123 directly relates to the practice of medicine. Any plea of nolo
124 contendere is a conviction for the purposes of this
125 subdivision.

126 (3) False or deceptive advertising.

127 (4) Aiding, assisting, procuring or advising any
128 unauthorized person to practice medicine and surgery or
129 podiatry contrary to law.

130 (5) Making or filing a report that the person knows to be

131 false; intentionally or negligently failing to file a report or
132 record required by state or federal law; willfully impeding
133 or obstructing the filing of a report or record required by
134 state or federal law; or inducing another person to do any of
135 the foregoing. Such reports and records as are herein
136 covered mean only those that are signed in the capacity as a
137 licensed physician or podiatrist.

138 (6) Requesting, receiving or paying directly or
139 indirectly a payment, rebate, refund, commission, credit or
140 other form of profit or valuable consideration for the
141 referral of patients to any person or entity in connection
142 with providing medical or other health care services or
143 clinical laboratory services, supplies of any kind, drugs,
144 medication or any other medical goods, services or devices
145 used in connection with medical or other health care
146 services.

147 (7) Unprofessional conduct by any physician or
148 podiatrist in referring a patient to any clinical laboratory or
149 pharmacy in which the physician or podiatrist has a
150 proprietary interest unless such physician or podiatrist
151 discloses in writing such interest to the patient. Such
152 written disclosure shall indicate that the patient may
153 choose any clinical laboratory for purposes of having any
154 laboratory work or assignment performed or any pharmacy
155 for purposes of purchasing any prescribed drug or any other
156 medical goods or devices used in connection with medical or
157 other health care services.

158 As used herein, "proprietary interest" does not include an
159 ownership interest in a building in which space is leased to a
160 clinical laboratory or pharmacy at the prevailing rate under
161 a lease arrangement that is not conditional upon the income
162 or gross receipts of the clinical laboratory or pharmacy.

163 (8) Exercising influence within a patient-physician
164 relationship for the purpose of engaging a patient in sexual
165 activity.

166 (9) Making a deceptive, untrue or fraudulent
167 representation in the practice of medicine and surgery or
168 podiatry.

169 (10) Soliciting patients, either personally or by an
170 agent, through the use of fraud, intimidation or undue
171 influence.

172 (11) Failing to keep written records justifying the

173 course of treatment of a patient, such records to include, but
174 not be limited to, patient histories, examination and test
175 results and treatment rendered, if any.

176 (12) Exercising influence on a patient in such a way as to
177 exploit the patient for financial gain of the physician or
178 podiatrist or of a third party. Any such influence includes,
179 but is not limited to, the promotion or sale of services,
180 goods, appliances or drugs.

181 (13) Prescribing, dispensing, administering, mixing or
182 otherwise preparing a prescription drug, including any
183 controlled substance under state or federal law, other than
184 in good faith and in a therapeutic manner in accordance
185 with accepted medical standards and in the course of the
186 physician's or podiatrist's professional practice.

187 (14) Performing any procedure or prescribing any
188 therapy that, by the accepted standards of medical practice
189 in the community, would constitute experimentation on
190 human subjects without first obtaining full, informed and
191 written consent.

192 (15) Practicing or offering to practice beyond the scope
193 permitted by law or accepting and performing professional
194 responsibilities that the person knows or has reason to
195 know he is not competent to perform.

196 (16) Delegating professional responsibilities to a person
197 when the physician or podiatrist delegating such
198 responsibilities knows or has reason to know that such
199 person is not qualified by training, experience or licensure
200 to perform them.

201 (17) Violating any provision of this article or a rule or
202 order of the board, or failing to comply with a subpoena or
203 subpoena duces tecum issued by the board.

204 (18) Conspiring with any other person to commit an act
205 or committing an act that would tend to coerce, intimidate
206 or preclude another physician or podiatrist from lawfully
207 advertising his services.

208 (19) Gross negligence in the use and control of
209 prescription forms.

210 (20) Professional incompetence.

211 (21) The inability to practice medicine and surgery or
212 podiatry with reasonable skill and safety due to physical or
213 mental disability, including deterioration through the
214 aging process or loss of motor skill or abuse of drugs or

215 alcohol. A physician or podiatrist adversely affected under
216 this subdivision shall be afforded an opportunity at
217 reasonable intervals to demonstrate that he can resume the
218 competent practice of medicine and surgery or podiatry
219 with reasonable skill and safety to patients. In any
220 proceeding under this subdivision, neither the record of
221 proceedings nor any orders entered by the board shall be
222 used against the physician or podiatrist in any other
223 proceeding.

224 (d) The board shall deny any application for a license or
225 other authorization to practice medicine and surgery or
226 podiatry in this state to any applicant who, and shall revoke
227 the license of any physician or podiatrist licensed or
228 otherwise lawfully practicing within this state who, is
229 found guilty by any court of competent jurisdiction of any
230 felony involving prescribing, selling, administering,
231 dispensing, mixing or otherwise preparing any prescription
232 drug, including any controlled substance under state or
233 federal law, for other than generally accepted therapeutic
234 purposes. Presentation to the board of a certified copy of the
235 guilty verdict or plea rendered in the court is sufficient
236 proof thereof for the purposes of this article. A plea of nolo
237 contendere has the same effect as a verdict or plea of guilt.

238 (e) The board may refer any cases coming to its attention
239 to an appropriate committee of an appropriate professional
240 organization for investigation and report. Any such report
241 shall contain recommendations for any necessary
242 disciplinary measures and shall be filed with the board
243 within ninety days of any such referral. The
244 recommendations shall be considered by the board and the
245 case may be further investigated by the board. The board
246 after full investigation shall take whatever action it deems
247 appropriate, as provided herein.

248 (f) The investigating body, as provided for in subsection
249 (e) of this section, may request and the board under any
250 circumstances may require a physician or podiatrist or
251 person applying for licensure or other authorization to
252 practice medicine and surgery or podiatry in this state to
253 submit to a physical or mental examination by a physician
254 or physicians approved by the board. A physician or
255 podiatrist submitting to any such examination has the
256 right, at his expense, to designate another physician to be

257 present at the examination and make an independent report
258 to the investigating body or the board. The expense of the
259 examination shall be paid by the board. Any individual who
260 applies for or accepts the privilege of practicing medicine
261 and surgery or podiatry in this state is deemed to have given
262 his consent to submit to all such examinations when
263 requested to do so in writing by the board and to have
264 waived all objections to the admissibility of the testimony
265 or examination report of any examining physician on the
266 ground that the testimony or report is privileged
267 communication. If a person fails or refuses to submit to any
268 such examination under circumstances which the board
269 finds are not beyond his control, such failure or refusal is
270 prima facie evidence of his inability to practice medicine
271 and surgery or podiatry competently and in compliance
272 with the standards of acceptable and prevailing medical
273 practice.

274 (g) In addition to any other investigators it employs, the
275 board may appoint one or more licensed physicians to act
276 for it in investigating the conduct or competence of a
277 physician.

278 (h) In every disciplinary or licensure denial action, the
279 board shall furnish the physician or podiatrist or applicant
280 with written notice setting out with particularity the
281 reasons for its action. Disciplinary and licensure denial
282 hearings shall be conducted in accordance with the
283 provisions of article five, chapter twenty-nine-a of this
284 code. However, hearings shall be heard upon sworn
285 testimony and the rules of evidence for trial courts of record
286 in this state shall apply to all such hearings. A transcript of
287 all hearings under this section shall be made, and the
288 respondent may obtain a copy of the transcript at his
289 expense. The physician or podiatrist has the right to defend
290 against any such charge by the introduction of evidence, the
291 right to be represented by counsel, the right to present and
292 cross-examine witnesses and the right to have subpoenas
293 and subpoenas duces tecum issued on his behalf for the
294 attendance of witnesses and the production of documents.
295 The board shall make all its final actions public. The order
296 shall contain the terms of all action taken by the board. *

297 (i) Whenever it finds any person unqualified because of
298 any of the grounds set forth in subsection (c) of this section,

299 the board may enter an order imposing one or more of the
300 following:

301 (1) Deny his application for a license or other
302 authorization to practice medicine and surgery or podiatry;

303 (2) Administer a public reprimand;

304 (3) Suspend, limit or restrict his license or other
305 authorization to practice medicine and surgery or podiatry
306 for not more than five years, including limiting the practice
307 of such person to, or by the exclusion of, one or more areas of
308 practice, including limitations on practice privileges;

309 (4) Revoke his license or other authorization to practice
310 medicine and surgery or podiatry or to prescribe or dispense
311 controlled substances;

312 (5) Require him to submit to care, counseling or
313 treatment designated by the board as a condition for initial
314 or continued licensure or renewal of licensure or other
315 authorization to practice medicine and surgery or podiatry;

316 (6) Require him to participate in a program of education
317 prescribed by the board;

318 (7) Require him to practice under the direction of a
319 physician or podiatrist designated by the board for a
320 specified period of time; and

321 (8) Assess a civil fine of not less than one thousand
322 dollars nor more than ten thousand dollars.

323 (j) Notwithstanding the provisions of section eight,
324 article one, chapter thirty of this code, if the board
325 determines the evidence in its possession indicates that a
326 physician's or podiatrist's continuation in practice or
327 unrestricted practice constitutes an immediate danger to
328 the public, the board may take any of the actions provided
329 for in subsection (i) of this section on a temporary basis and
330 without a hearing, if institution of proceedings for a hearing
331 before the board are initiated simultaneously with the
332 temporary action and begin within fifteen days of such
333 action. The board shall render its decision within five days
334 of the conclusion of a hearing under this subsection.

335 (k) Any person against whom disciplinary action is
336 taken pursuant to the provisions of this article has the right
337 to judicial review as provided in articles five and six,
338 chapter twenty-nine-a of this code. Except with regard to
339 an order of temporary suspension of a license for six months
340 or less, a person shall not practice medicine and surgery or

341 podiatry or deliver health care services in violation of any
342 disciplinary order revoking or limiting his license while any
343 such review is pending. Within sixty days, the board shall
344 report its final action regarding restriction, limitation,
345 suspension or revocation of the license of a physician or
346 podiatrist, limitation on practice privileges or other
347 disciplinary action against any physician or podiatrist to all
348 appropriate state agencies, appropriate licensed health
349 facilities and hospitals, insurance companies or
350 associations writing medical malpractice insurance in this
351 state, the American medical association, the American
352 podiatry association, professional societies of physicians or
353 podiatrists in the state and any entity responsible for the
354 fiscal administration of medicare and medicaid.

355 (l) Any person against whom disciplinary action has
356 been taken under the provisions of this article shall at
357 reasonable intervals be afforded an opportunity to
358 demonstrate that he can resume the practice of medicine
359 and surgery or podiatry on a general or limited basis. At the
360 conclusion of a suspension, limitation or restriction period,
361 the physician or podiatrist has the right to resume practice
362 pursuant to the orders of the board: *Provided*, That for a
363 revocation pursuant to subsection (d) of this section a
364 reapplication shall not be accepted for a period of at least
365 five years.

366 (m) Any entity, organization or person, including the
367 board, any member of the board, its agents or employees
368 and any entity or organization or its members referred to in
369 this article, any insurer, its agents or employees, a medical
370 peer review committee and a hospital governing board, its
371 members or any committee appointed by it acting without
372 malice and without gross negligence in making any report
373 or other information available to the board or a medical
374 peer review committee pursuant to law and any person
375 acting without malice and without gross negligence who
376 assists in the organization, investigation or preparation of
377 any such report or information or assists the board or a
378 hospital governing body or any such committee in carrying
379 out any of its duties or functions provided by law, is immune
380 from civil or criminal liability, except that the unlawful
381 disclosure of confidential information possessed by the
382 board is a misdemeanor as provided for in this article.

383 (n) A physician or podiatrist may request in writing to
384 the board a limitation on or the surrendering of his license
385 to practice medicine and surgery or podiatry or other
386 appropriate sanction as provided herein. The board may
387 grant such request and, if it considers it appropriate, may
388 waive the commencement or continuation of other
389 proceedings under this section. A physician or podiatrist
390 whose license is limited or surrendered or against whom
391 other action is taken under this subsection has a right at
392 reasonable intervals to petition for removal of any
393 restriction or limitation on or for reinstatement of his
394 license to practice medicine and surgery or podiatry.

395 (o) In every case considered by the board under this
396 article regarding discipline or licensure, whether initiated
397 by the board or upon complaint or information from any
398 person or organization, the board shall make a preliminary
399 determination as to whether probable cause exists to
400 substantiate charges of disqualification due to any reason
401 set forth in subsection (c) of this section. If such probable
402 cause is found to exist, all proceedings on such charges shall
403 be open to the public who shall be entitled to all reports,
404 records, and nondeliberative materials introduced at such
405 hearing, including the record of the final action taken:
406 *Provided*, That any medical records, which were introduced
407 at such hearing and which pertain to a person who has not
408 expressly waived his right to the confidentiality of such
409 records, shall not be open to the public nor is the public
410 entitled to such records. If a finding is made that probable
411 cause does not exist, the public has a right of access to the
412 complaint or other document setting forth the charges, the
413 findings of fact and conclusions supporting such finding
414 that probable cause does not exist, if the subject physician
415 or podiatrist consents to such access.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations.

1 (a) The board may independently initiate suspension or
2 revocation proceedings as well as initiate suspension or

3 revocation proceedings based on information received from
4 any person.

5 The board shall initiate investigations as to professional
6 incompetence or other reasons for which a licensed
7 osteopathic physician and surgeon may be adjudged
8 unqualified if the board receives notice that five or more
9 judgments or settlements arising from medical professional
10 liability have been rendered or made against such
11 osteopathic physician.

12 (b) Upon request of the board, any medical peer review
13 committee in this state shall report any information that
14 may relate to the practice or performance of any
15 osteopathic physician known to that medical peer review
16 committee. Copies of such requests for information from a
17 medical peer review committee may be provided to the
18 subject osteopathic physician if, in the discretion of the
19 board, the provision of such copies will not jeopardize the
20 board's investigation. In the event that copies are so
21 provided, the subject osteopathic physician is allowed
22 fifteen days to comment on the requested information and
23 such comments must be considered by the board.

24 After the completion of a hospital's formal disciplinary
25 procedure and after any resulting legal action, the chief
26 executive officer of such hospital shall report in writing to
27 the board within sixty days the name of any member of the
28 medical staff or any other osteopathic physician practicing
29 in the hospital whose hospital privileges have been revoked,
30 restricted, reduced or terminated for any cause, including
31 resignation, together with all pertinent information
32 relating to such action. The chief executive officer shall also
33 report any other formal disciplinary action taken against
34 any osteopathic physician by the hospital upon the
35 recommendation of its medical staff relating to professional
36 ethics, medical incompetence, medical malpractice, moral
37 turpitude or drug or alcohol abuse. Temporary suspension
38 for failure to maintain records on a timely basis or failure to
39 attend staff or section meetings need not be reported.

40 Any professional society in this state comprised primarily
41 of osteopathic physicians or physicians and surgeons of
42 other schools of medicine which takes formal disciplinary
43 action against a member relating to professional ethics,
44 professional incompetence, professional malpractice,

45 moral turpitude or drug or alcohol abuse, shall report in
46 writing to the board within sixty days of a final decision the
47 name of such member, together with all pertinent
48 information relating to such action.

49 Every person, partnership, corporation, association,
50 insurance company, professional society or other
51 organization providing professional liability insurance to
52 an osteopathic physician in this state shall submit to the
53 board the following information within thirty days from
54 any judgment, dismissal or settlement of a civil action or of
55 any claim involving the insured: The date of any judgment,
56 dismissal or settlement; whether any appeal has been taken
57 on the judgment and, if so, by which party; the amount of
58 any settlement or judgment against the insured; and such
59 other information as the board may require.

60 Within thirty days after a person known to be an
61 osteopathic physician licensed or otherwise lawfully
62 practicing medicine and surgery in this state or applying to
63 be so licensed is convicted of a felony under the laws of this
64 state, or of any crime under the laws of this state involving
65 alcohol or drugs in any way, including any controlled
66 substance under state or federal law, the clerk of the court
67 of record in which the conviction was entered shall forward
68 to the board a certified true and correct abstract of record of
69 the convicting court. The abstract shall include the name
70 and address of such osteopathic physician or applicant, the
71 nature of the offense committed and the final judgment and
72 sentence of the court.

73 Upon a determination of the board that there is probable
74 cause to believe that any person, partnership, corporation,
75 association, insurance company, professional society or
76 other organization has failed or refused to make a report
77 required by this subsection, the board shall provide written
78 notice to the alleged violator stating the nature of the
79 alleged violation and the time and place at which the
80 alleged violator shall appear to show good cause why a civil
81 penalty should not be imposed. The hearing shall be
82 conducted in accordance with the provisions of article five,
83 chapter twenty-nine-a of this code. After reviewing the
84 record of such hearing, if the board determines that a
85 violation of this subsection has occurred, the board shall
86 assess a civil penalty of not less than one thousand dollars

87 nor more than ten thousand dollars against such violator.
88 Anyone so assessed shall be notified of the assessment in
89 writing and the notice shall specify the reasons for the
90 assessment. If the violator fails to pay the amount of the
91 assessment to the board within thirty days, the attorney
92 general may institute a civil action in the circuit court of
93 Kanawha County to recover the amount of the assessment.
94 In any such civil action, the court's review of the board's
95 action shall be conducted in accordance with the provisions
96 of section four, article five, chapter twenty-nine-a of this
97 code.

98 Any person may report to the board relevant facts about
99 the conduct of any osteopathic physician in this state which
100 in the opinion of such person amounts to professional
101 malpractice or professional incompetence.

102 The board shall provide forms for filing reports pursuant
103 to this section. Reports submitted in other forms shall be
104 accepted by the board.

105 The filing of a report with the board pursuant to any
106 provision of this article, any investigation by the board or
107 any disposition of a case by the board does not preclude any
108 action by a hospital, other health care facility or
109 professional society comprised primarily of osteopathic
110 physicians or physicians and surgeons of other schools of
111 medicine to suspend, restrict or revoke the privileges or
112 membership of such osteopathic physician.

113 (c) In every case considered by the board under this
114 article regarding suspension, revocation or issuance of a
115 license whether initiated by the board or upon complaint or
116 information from any person or organization, the board
117 shall make a preliminary determination as to whether
118 probable cause exists to substantiate charges of cause to
119 suspend, revoke or refuse to issue a license as set forth in
120 subsection (a), section eleven of this article. If such probable
121 cause is found to exist, all proceedings on such charges shall
122 be open to the public who shall be entitled to all reports,
123 records, and nondeliberative materials introduced at such
124 hearing, including the record of the final action taken:
125 *Provided*, That any medical records, which were introduced
126 at such hearing and which pertain to a person who has not
127 expressly waived his right to the confidentiality of such
128 records, shall not be open to the public nor is the public

129 entitled to such records. If a finding is made that probable
130 cause does not exist, the public has a right of access to the
131 complaint or other document setting forth the charges, the
132 findings of fact and conclusions supporting such finding
133 that probable cause does not exist, if the subject osteopathic
134 physician consents to such access.

ARTICLE 16. CHIROPRACTORS.

**§30-16-8a. Initiation of suspension or revocation proceedings
allowed and required; reporting of information to
board pertaining to professional malpractice and
professional incompetence required; penalties;
probable cause determinations.**

1 (a) The board may independently initiate suspension or
2 revocation proceedings as well as initiate suspension or
3 revocation proceedings based on information received from
4 any person.

5 The board shall initiate investigations as to professional
6 incompetence or other reasons for which a licensed
7 chiropractor may be adjudged unqualified if the board
8 receives notice that five or more judgments or settlements
9 arising from medical professional liability have been
10 rendered or made against such chiropractor.

11 (b) Upon request of the board, any medical peer review
12 committee in this state shall report any information that
13 may relate to the practice or performance of any
14 chiropractor known to that medical peer review committee.
15 Copies of such requests for information from a medical peer
16 review committee may be provided to the subject
17 chiropractor if, in the discretion of the board, the provision
18 of such copies will not jeopardize the board's investigation.
19 In the event that copies are so provided, the subject
20 chiropractor is allowed fifteen days to comment on the
21 requested information and such comments must be
22 considered by the board.

23 After the completion of a hospital's formal disciplinary
24 procedure and after any resulting legal action, the chief
25 executive officer of such hospital shall report in writing to
26 the board within sixty days the name of any member of the
27 medical staff or any other chiropractor practicing in the
28 hospital whose hospital privileges have been revoked,
29 restricted, reduced or terminated for any cause, including

30 resignation, together with all pertinent information
31 relating to such action. The chief executive officer shall also
32 report any other formal disciplinary action taken against
33 any chiropractor by the hospital upon the recommendation
34 of its medical staff relating to professional ethics, medical
35 incompetence, medical malpractice, moral turpitude or
36 drug or alcohol abuse. Temporary suspension for failure to
37 maintain records on a timely basis or failure to attend staff
38 or section meetings need not be reported.

39 Any professional society in this state comprised primarily
40 of chiropractors which takes formal disciplinary action
41 against a member relating to professional ethics,
42 professional incompetence, professional malpractice,
43 moral turpitude or drug or alcohol abuse, shall report in
44 writing to the board within sixty days of a final decision the
45 name of such member, together with all pertinent
46 information relating to such action.

47 Every person, partnership, corporation, association,
48 insurance company, professional society or other
49 organization providing professional liability insurance to a
50 chiropractor in this state shall submit to the board the
51 following information within thirty days from any
52 judgment, dismissal or settlement of a civil action or of any
53 claim involving the insured: The date of any judgment,
54 dismissal or settlement; whether any appeal has been taken
55 on the judgment, and, if so, by which party; the amount of
56 any settlement or judgment against the insured; and such
57 other information as the board may require.

58 Within thirty days after a person known to be a
59 chiropractor licensed or otherwise lawfully practicing
60 chiropractic in this state or applying to be so licensed is
61 convicted of a felony under the laws of this state, or of any
62 crime under the laws of this state involving alcohol or drugs
63 in any way, including any controlled substance under state
64 or federal law, the clerk of the court of record in which the
65 conviction was entered shall forward to the board a
66 certified true and correct abstract of record of the
67 convicting court. The abstract shall include the name and
68 address of such chiropractor or applicant, the nature of the
69 offense committed and the final judgment and sentence of
70 the court.

71 Upon a determination of the board that there is probable

72 cause to believe that any person, partnership, corporation,
73 association, insurance company, professional society or
74 other organization has failed or refused to make a report
75 required by this subsection, the board shall provide written
76 notice to the alleged violator stating the nature of the
77 alleged violation and the time and place at which the
78 alleged violator shall appear to show good cause why a civil
79 penalty should not be imposed. The hearing shall be
80 conducted in accordance with the provisions of article five,
81 chapter twenty-nine-a of this code. After reviewing the
82 record of such hearing, if the board determines that a
83 violation of this subsection has occurred, the board shall
84 assess a civil penalty of not less than one thousand dollars
85 nor more than ten thousand dollars against such violator.
86 Anyone so assessed shall be notified of the assessment in
87 writing and the notice shall specify the reasons for the
88 assessment. If the violator fails to pay the amount of the
89 assessment to the board within thirty days, the attorney
90 general may institute a civil action in the circuit court of
91 Kanawha County to recover the amount of the assessment.
92 In any such civil action, the court's review of the board's
93 action shall be conducted in accordance with the provisions
94 of section four, article five, chapter twenty-nine-a of this
95 code.

96 Any person may report to the board relevant facts about
97 the conduct of any chiropractor in this state which in the
98 opinion of such person amounts to professional malpractice
99 or professional incompetence.

100 The board shall provide forms for filing reports pursuant
101 to this section. Reports submitted in other forms shall be
102 accepted by the board.

103 The filing of a report with the board pursuant to any
104 provision of this article, any investigation by the board or
105 any disposition of a case by the board does not preclude any
106 action by a hospital, other health care facility or
107 professional society comprised primarily of chiropractors
108 to suspend, restrict or revoke the privileges or membership
109 of such chiropractor.

110 (c) In every case considered by the board under this article
111 regarding suspension, revocation or issuance of a license
112 whether initiated by the board or upon complaint or
113 information from any person or organization, the board

114 shall make a preliminary determination as to whether
115 probable cause exists to substantiate charges of grounds to
116 suspend, revoke or refuse to issue a license as set forth in
117 section eight of this article. If such probable cause is found
118 to exist, all proceedings on such charges shall be open to the
119 public who shall be entitled to all reports, records, and
120 nondeliberative materials introduced at such hearing,
121 including the record of the final action taken: *Provided,*
122 That any medical records, which were introduced at such
123 hearing and which pertain to a person who has not
124 expressly waived his right to the confidentiality of such
125 records, shall not be open to the public nor is the public
126 entitled to such records. If a finding is made that probable
127 cause does not exist, the public has a right of access to the
128 complaint or other document setting forth the charges, the
129 findings of fact and conclusions supporting such finding
130 that probable cause does not exist, if the subject
131 chiropractor consents to such access.

CHAPTER 33. INSURANCE.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-2. Scope of article.

- 1 (a) This article applies to fire, marine, casualty, and
2 surety insurance, on risks or operations in this state.
- 3 (b) This article shall not apply:
 - 4 (1) To reinsurance, other than joint reinsurance to the
5 extent stated in section eleven of this article;
 - 6 (2) To life or accident and sickness insurance;
 - 7 (3) To insurance of vessels or craft, their cargoes, marine
8 builders' risks, marine protection and indemnity, or other
9 risks commonly insured under marine, as distinguished
10 from inland marine, insurance policies;
 - 11 (4) To insurance against loss of or damage to aircraft,
12 including their accessories and equipment, or against
13 liability, other than workers' compensation and employ-
14 er's liability, arising out of the ownership, maintenance
15 or use of aircraft;
 - 16 (5) To title insurance;
 - 17 (6) To malpractice insurance insofar as the provisions⁴
18 of this article directly conflict and thereby are supplanted
19 by article twenty-a of this chapter.

20 (c) If any kind of insurance, subdivision or combination
21 thereof, or type of coverage, is subject to both the provisions
22 of this article expressly applicable to casualty and surety
23 insurance and to those expressly applicable to fire and
24 marine insurance, the commissioner may apply to filings
25 made for such kind of insurance the provisions of this
26 article which are in his judgment most suitable.

ARTICLE 20B. RATES FOR MALPRACTICE INSURANCE POLICIES.

- §33-20B-1. Scope of article.
- §33-20B-2. Rate making.
- §33-20B-3. Rate filings.
- §33-20B-4. Disapproval of filings.
- §33-20B-5. Rating organizations.
- §33-20B-6. Rate review and reporting.
- §33-20B-7. Studies by the commissioner.

§33-20B-1. Scope of article.

1 This article applies to malpractice insurance as defined in
2 subdivision (9), subsection (e), section ten, article one of this
3 chapter. Nothing in this article shall be construed to
4 supplant any provision of article twenty of this chapter
5 which does not directly conflict with the provisions herein.

§33-20B-2. Rate making.

- 1 Any and all modifications of rates made on or after the
2 effective date of this article shall be made in accordance
3 with the following provisions:
- 4 (a) Due consideration shall be given to the past loss
5 experience within and outside this state. No consideration
6 shall be given to the prospective or projected loss
7 experience within or outside this state except as prescribed
8 by the regulations of the commissioner promulgated
9 pursuant to subsection (a), section six of this article.
- 10 (b) Due consideration shall be given to catastrophe
11 hazards, if any, to a reasonable margin for underwriting
12 profit and contingencies, to dividends, savings or
13 unabsorbed premium deposits allowed or returned by
14 insurers to their policyholders, members or subscribers and
15 actual past expenses and demonstrable prospective or
16 projected expenses applicable to this state.
- 17 (c) Rates shall not be excessive, inadequate or unfairly
18 discriminatory.

19 (d) Except to the extent necessary to meet the provisions
20 of subdivision (c) of this section, uniformity among insurers
21 in any matters within the scope of this section is neither
22 required nor prohibited.

23 (e) Rates made in accordance with this section may be
24 used subject to the provisions of this article.

§33-20B-3. Rate filings.

1 (a) Every filing for malpractice insurance made
2 pursuant to subsection (a), section four, article twenty of
3 this chapter shall state the proposed effective date thereof,
4 the character and extent of the coverage contemplated, and
5 information in support of such filing. The information
6 furnished in support of a filing shall include (i) the
7 experience or judgment of the insurer or rating
8 organization making the filing; (ii) its interpretation of any
9 statistical data the filing relies upon; (iii) the experience of
10 other insurers or rating organizations; and (iv) any other
11 relevant factors required by the commissioner. When a
12 filing is not accompanied by the information required by
13 this section upon which the insurer supports such filing, the
14 commissioner shall require such insurer to furnish such
15 information and, in such event, the waiting period
16 prescribed by subsection (b) of this section shall commence
17 as of the date such information is furnished.

18 A filing and any supporting information shall be open to
19 public inspection as soon as the filing is received by the
20 commissioner. Any interested party may file a brief with the
21 commissioner supporting his position concerning the filing.
22 Any person or organization may file with the commissioner
23 a signed statement declaring and supporting his or its
24 position concerning the filing. Upon receipt of any such
25 statement prior to the effective date of the filing, the
26 commissioner shall mail or deliver a copy of such statement
27 to the filer, which may file such reply as it may desire to
28 make. This section shall not be applicable to any
29 memorandum or statement of any kind by any employee of
30 the commissioner.

31 (b) Every such filing shall be on file for a waiting period
32 of sixty days before it becomes effective, which period may
33 be extended by the commissioner for an additional period
34 not to exceed thirty days if he gives written notice within

35 such waiting period to the insurer or rating organization
36 which made the filing that he needs such additional time for
37 the consideration of such filing. Upon written application
38 by such insurer or rating organization, the commissioner
39 may authorize a filing which he has reviewed to become
40 effective before the expiration of the waiting period or any
41 extension thereof. A filing shall be deemed to meet the
42 requirements of this article unless disapproved by the
43 commissioner within the waiting period or any extension
44 thereof.

45 (c) No insurer shall make or issue a contract or policy of
46 malpractice insurance except in accordance with the filings
47 which are in effect for said insurer as provided in this
48 article.

§33-20B-4. Disapproval of filings.

1 (a) If within the waiting period or any extension thereof
2 as provided in subsection (b), section three of this article,
3 the commissioner finds that a filing does not meet the
4 requirements of this article, he shall send to the insurer or
5 rating organization which made such filing written notice
6 of disapproval of such filing specifying therein in what
7 respects he finds such filing fails to meet the requirements
8 of this article and stating that such filing shall not be
9 effective. Within thirty days from the issuance of written
10 notice of disapproval, any insurer or rating organization
11 aggrieved by such disapproval of any filing may request a
12 hearing thereon pursuant to section thirteen, article two of
13 this chapter.

14 (b) If at any time subsequent to the waiting period or any
15 extension thereof as provided in subsection (b), section
16 three of this article, the commissioner finds that a filing
17 does not meet the requirements of this article, he shall send
18 to the insurer or rating organization which made such filing
19 a written order specifying in what respect he finds that such
20 filing fails to meet the requirements of this article and a
21 date, not less than thirty days from the issuance of such
22 order, when such filing shall be deemed no longer effective.
23 Within thirty days from the issuance of such order, any
24 insurer or rating organization aggrieved by such order may
25 request a hearing thereon pursuant to section thirteen,
26 article two of this chapter. Any such order shall not affect

27 any contract or policy made or issued prior to the expiration
28 date set forth in such order.

29 (c) Any person or organization aggrieved by any filing
30 which is in effect or the application thereof may request a
31 hearing thereon pursuant to section thirteen, article two of
32 this chapter. The insurer or rating organization which made
33 such filing shall be notified in writing upon receipt of any
34 such request for hearing and thereby made a party to such
35 hearing. Upon such hearing, if the commissioner finds that
36 such filing fails to meet the requirements of this article, he
37 shall issue an order specifying in what respects he so finds
38 and a date, not less than thirty days from the issuance of
39 such order, when such filings shall be deemed no longer
40 effective.

41 (d) The commissioner shall hold a public hearing upon
42 every filing which requests an increase in general rates of
43 ten percent or more and upon every filing which, in the
44 opinion of the commissioner, is of such import that it will
45 affect the public. The insurer or rating organization which
46 made such filing shall be notified in writing not less than
47 fifteen days prior to the hearing date. Notice of the time,
48 place and filing to be considered shall be published as a
49 Class II legal advertisement in every county in the state in
50 accordance with article three, chapter fifty-nine of this
51 code.

§33-20B-5. Rating organizations.

1 (a) A corporation, an unincorporated association, a
2 partnership or an individual, whether located within or
3 outside this state, may make application to the
4 commissioner for license as a rating organization for such
5 kinds of malpractice insurance as are specified in its
6 application and shall file therewith: (1) A copy of its
7 constitution, its articles of agreement or association or its
8 certificates of incorporation, and of its bylaws, rules and
9 regulations governing the conduct of its business; (2) a list
10 of its members and subscribers; (3) the name and address of
11 a resident of this state as attorney-in-fact upon whom
12 notices or orders of the commissioner or process affecting
13 such rating organization may be served; and (4) a statement
14 of its qualifications as a rating organization. If the
15 commissioner finds that the applicant is competent,

16 trustworthy and otherwise qualified to act as a rating
17 organization and that its constitution, articles of agreement
18 or association or certificate of incorporation, and its
19 bylaws, rules and regulations governing the conduct of its
20 business conform to the requirements of law, he shall issue a
21 license specifying the kinds of insurance or subdivisions
22 thereof for which the applicant is authorized to act as a
23 rating organization. Every such application shall be
24 granted or denied in whole or in part by the commissioner
25 within sixty days of the date of its filing with him. Licenses
26 issued pursuant to this section shall remain in effect for
27 three years unless sooner suspended or revoked by the
28 commissioner. The fee for said license shall be twenty-five
29 dollars, which fee shall be in addition to all other fees,
30 licenses or taxes to which a rating organization might
31 otherwise be subject, and all fees so collected shall be paid
32 to the state treasury pursuant to subsection (b), section
33 thirteen, article three of this chapter. In the event the rating
34 organization ceases to meet the requirements of this article,
35 the license issued pursuant to this section may be suspended
36 or revoked by the commissioner upon notice and hearing
37 pursuant to article five, chapter twenty-nine-a of this code.
38 Every rating organization shall notify the commissioner
39 promptly of every change in: (1) Its constitution, its articles
40 of agreement or association or its certificate of
41 incorporation, and its bylaws, rules and regulations
42 governing the conduct of its business; (2) its list of members
43 and subscribers; and (3) the name and address of the
44 resident of this state designated as attorney-in-fact by it
45 upon whom notices or orders of the commissioner or process
46 affecting such rating organization may be served.

47 (b) The commissioner shall promulgate legislative rules
48 pursuant to article three, chapter twenty-nine-a of this
49 code prescribing procedures for rating organizations to
50 permit any insurer not a member to become a subscriber to
51 its rating services for any kind of insurance for which it is
52 authorized to act as a rating organization pursuant to this
53 section. Each rating organization shall furnish its rating
54 services without discrimination to its members and
55 subscribers. The reasonableness of any legislative rule in its
56 application to subscribers shall be reviewed by the
57 commissioner upon request of any such subscriber. If the

58 commissioner finds, upon notice and hearing provided
59 pursuant to article five, chapter twenty-nine-a of this code,
60 that such rule or regulation is unreasonable in its
61 application to subscribers, he shall order that such rule is
62 not to be applicable to subscribers and promulgate a revised
63 rule. The denial of any insurer's application for
64 subscribership in contravention of a legislative rule or the
65 failure to approve or deny such an application within thirty
66 days after submission to the rating organization shall be
67 reviewed by the commissioner upon request of the
68 aggrieved insurer. If the commissioner finds, upon notice
69 and hearing provided pursuant to article five, chapter
70 twenty-nine-a of this code, that the insurer has been
71 wrongfully denied subscribership, he shall order the rating
72 organization to admit the insurer as a subscriber.

73 (c) No rating organization shall adopt any policy or rule
74 the effect of which would be to prohibit or regulate the
75 payment of dividends, savings or unabsorbed premium
76 deposits allowed or returned by insurers to their
77 policyholders, members or subscribers.

78 (d) Cooperation among rating organizations or among
79 rating organizations and insurers in rate making or in other
80 matters within the scope of this article or article twenty of
81 this chapter is hereby authorized, provided the filings
82 resulting from such cooperation are subject to all the
83 provisions of this article and article twenty which are
84 applicable to filings generally.

85 The commissioner may review such cooperative activities
86 and practices. If the commissioner finds, upon notice and
87 hearing provided pursuant to article five, chapter twenty-
88 nine-a of this code, that any such activity or practice is
89 unfair, unreasonable or otherwise inconsistent with the
90 provisions of this article, he shall issue a written order
91 specifying in what respects such activity or practice is
92 unfair, unreasonable or otherwise inconsistent with the
93 provisions of this article, and requiring that such activity or
94 practice be discontinued immediately.

95 (e) Any rating organization may subscribe for or
96 purchase actuarial, technical or other services, and such
97 services shall be available to all members and subscribers
98 without discrimination.

§33-20B-6. Rate review and reporting.

1 (a) The commissioner shall review annually the rules,
2 rates and rating plans filed and in effect for each insurer
3 providing five percent or more of the malpractice insurance
4 coverage in this state in the preceding calendar year to
5 determine whether such filings continue to meet the
6 requirements of this article and whether such filings are
7 unfair or inappropriate given the loss experience in this
8 state in the preceding year.

9 Within two hundred forty days of the effective date of this
10 article, the commissioner shall promulgate legislative rules
11 pursuant to article three, chapter twenty-nine-a of this
12 code, establishing procedures for the fair and appropriate
13 evaluation and determination of the past loss experience
14 and prospective or projected loss experience of insurers
15 within and outside this state, actual past expenses incurred
16 in this state and demonstrable prospective or projected
17 expenses applicable to this state.

18 (b) Within one hundred eighty days of the effective date
19 of this article, the commissioner shall promulgate
20 legislative rules pursuant to article three, chapter twenty-
21 nine-a of this code, establishing procedures whereby each
22 insurer providing five percent or more of the malpractice
23 insurance coverage in this state shall submit to the
24 commissioner the following information:

25 (1) The number of claims filed per category;

26 (2) The number of civil actions filed;

27 (3) The number of civil actions compromised or settled
28 and the amount of each such compromise or settlement;

29 (4) The number of verdicts in civil actions and the
30 amount of each such verdict;

31 (5) The number of civil actions appealed and the
32 disposition of each such appeal;

33 (6) The number of civil actions dismissed and the cause
34 of each such dismissal;

35 (7) The total dollar amount paid in claims;

36 (8) The total dollar amount paid to plaintiffs in civil
37 actions;

38 (9) The number of claims closed without payment and
39 the amount held in reserve for each such claim;

40 (10) The total dollar amount expended for loss
41 adjustment expenses, commissions and brokerage
42 expenses;

43 (11) The total dollar amount expended in defense and
44 litigation of claims;

45 (12) The total dollar amount held in reserve for
46 anticipated claims;

47 (13) Net profit or loss;

48 (14) Profits from investment income on net realized
49 capital gains and loss reserves and unearned premiums; and

50 (15) The number of malpractice insurance policies
51 canceled for reasons other than nonpayment of premiums.

52 Any insurer who fails to submit any and all such
53 information to the commissioner as required by this
54 subsection in accordance with the regulations promulgated
55 hereunder shall be fined ten thousand dollars for each of the
56 first five such failures per year and shall be fined one
57 hundred thousand dollars for the sixth and each subsequent
58 such failure per year.

59 (c) Beginning in the year one thousand nine hundred
60 eighty-six, the commissioner shall report annually during
61 the month of November to the joint standing committee on
62 the judiciary the following information pertaining to each
63 insurer providing five percent or more of the malpractice
64 insurance coverage in this state:

65 (1) The loss experience within the state during the
66 preceding calendar year;

67 (2) The rules, rates and rating plans in effect on the date
68 of such report;

69 (3) The investment portfolio, including reserves, and the
70 annual rate of return thereon; and

71 (4) The information submitted to the commissioner
72 pursuant to the regulations promulgated by authority of
73 subsection (b) of this section.

§33-20B-7. Studies by the commissioner.

1 The commissioner is hereby directed to study the
2 feasibility and desirability of creating joint underwriting
3 associations or alternative pooling agreements to facilitate
4 the issuance and underwriting of malpractice insurance
5 policies in this state. The commissioner is further directed
6 to identify and study the policies and practices of all
7 insurers in setting dollar amounts to be held in reserve for
8 anticipated claims and claims filed against malpractice
9 insurance policies in this state.

10 Beginning in the year one thousand nine hundred eighty-
11 six, the commissioner shall report periodically the results of
12 the studies required by this section to the joint standing
13 committee on the judiciary. Beginning in the year one
14 thousand nine hundred eighty-seven, the commissioner
15 shall file an annual report of the results of such studies with
16 the Legislature on the first day of its regular session.

**ARTICLE 20C. CANCELLATION OR NONRENEWAL OF MALPRACTICE
INSURANCE POLICIES.**

§33-20C-1. Scope of article.

§33-20C-2. Cancellation and nonrenewal prohibited except for specified reasons; notice.

§33-20C-3. Insurer to specify reasons for cancellation and nonrenewal.

§33-20C-4. Notice period for cancellation or nonrenewal.

§33-20C-5. Hearings and review.

§33-20C-1. Scope of article.

1 This article applies to malpractice insurance as defined in
2 subdivision (9), subsection (e), section ten, article one of this
3 chapter. This article applies to malpractice insurance
4 policies which have been in effect for at least sixty days or
5 have been renewed at least once.

**§33-20C-2. Cancellation and nonrenewal prohibited except for
specified reasons; notice.**

1 No insurer once having issued or delivered a policy
2 providing malpractice insurance in this state shall cancel or
3 fail to renew such policy, except for one or more of the
4 following reasons:

5 (a) The named insured fails to discharge any of his
6 obligations to pay premiums for such policy or any
7 installment thereof within a reasonable time of the due
8 date;

9 (b) The policy was obtained through material
10 misrepresentation;

11 (c) The insured violates any of the material terms and
12 conditions of the policy;

13 (d) The insured's experiences render him an increased
14 risk, which experiences may include revocation or
15 suspension of a professional license or two or more claims
16 paid or judgments rendered against the insured for
17 professional liability within a three-year period.

18 (e) The unavailability of reinsurance, upon sufficient
19 proof thereof being supplied to the commissioner.

20 Any purported cancellation or failure to renew a policy
21 providing malpractice insurance attempted in
22 contravention of this section shall be void.

§33-20C-3. Insurer to specify reasons for cancellation and non-renewal.

1 In every instance in which a policy or contract of
2 malpractice insurance is cancelled or is not renewed by the
3 insurer, the insurer or his duly authorized agent shall cite
4 within the written notice of the action the allowable reason
5 in section two of this article for which such action was taken
6 and shall state with specificity the circumstances giving
7 rise to the allowable reason so cited. The notice of the action
8 shall further state that the insured has a right to request a
9 hearing pursuant to section five of this article within thirty
10 days.

§33-20C-4. Notice period for cancellation or nonrenewal.

1 (a) No insurer shall fail to renew a policy or contract
2 providing malpractice insurance unless written notice of
3 such nonrenewal is forwarded to the insured by certified
4 mail, return receipt requested, not less than ninety days
5 prior to the expiration date of such policy.
6 (b) No insurer shall cancel a policy or contract
7 providing malpractice insurance during the term of such
8 policy unless written notice of such cancellation is
9 forwarded to the insured by certified mail, return receipt
10 requested, not more than thirty days after the reason for
11 such cancellation, as provided in section two of this article,
12 arose or occurred or the insurer learned that it arose or
13 occurred and not less than thirty days prior to the effective
14 cancellation date.
15 (c) Notwithstanding any other provision of this article,
16 the insurer shall renew any malpractice insurance policy
17 that has not been renewed due to the insured's failure to pay
18 the renewal premium when due if none of the other grounds
19 for failure to renew as set forth in section two of this article
20 exist and the insured makes application for renewal within
21 ninety days of the original expiration date of the policy. If a
22 policy is renewed as provided in this subsection, the
23 coverage afforded need not be retroactive to the original
24 expiration date of the policy, but may resume upon the

25 renewal date at the current premium levels offered by the
26 company.

§33-20C-5. Hearings and review.

1 Any insured aggrieved by the cancellation or failure to
2 renew a policy or contract providing malpractice insurance
3 may request a hearing before the commissioner or his
4 designee within thirty days of the receipt of any such notice.
5 The hearing shall be conducted pursuant to section
6 thirteen, article two of this chapter. The policy shall remain
7 in effect until entry of the commissioner's order. Any party
8 aggrieved by an order of the commissioner may seek
9 judicial review in the circuit court of the county in which
10 the insured resides in accordance with section fourteen,
11 article two of this chapter.

**CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;
JUDICIAL SALE.**

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-1. Legislative findings and declaration of purpose.

§55-7B-2. Definitions.

§55-7B-3. Elements of proof.

§55-7B-4. Health care injuries; limitations of actions; exceptions.

§55-7B-5. Health care actions; complaint; specific amount of damages not to
be stated.

§55-7B-6. Pretrial procedures.

§55-7B-7. Testimony of expert witness on standard of care.

§55-7B-8. Limit on liability for noneconomic loss.

§55-7B-9. Effective date; applicability of provisions.

§55-7B-10. Severability.

§55-7B-1. Legislative findings and declaration of purpose.

1 The Legislature hereby finds and declares that the
2 citizens of this state are entitled to the best medical care and
3 facilities available and that health care providers offer an
4 essential and basic service which requires that the public
5 policy of this state encourage and facilitate the provision of
6 such service to our citizens:

7 That as in every human endeavor the possibility of injury
8 or death from negligent conduct commands that protection
9 of the public served by health care providers be recognized
10 as an important state interest;

11 That our system of litigation is an essential component of
12 this state's interest in providing adequate and reasonable

13 compensation to those persons who suffer from injury or
14 death as a result of professional negligence;

15 That liability insurance is a key part of our system of
16 litigation, affording compensation to the injured while
17 fulfilling the need and fairness of spreading the cost of
18 the risks of injury;

19 That a further important component of these protections
20 is the capacity and willingness of health care providers to
21 monitor and effectively control their professional
22 competency, so as to protect the public and ensure to the
23 extent possible the highest quality of care;

24 That it is the duty and responsibility of the Legislature to
25 balance the rights of our individual citizens to adequate and
26 reasonable compensation with the broad public interest in
27 the provision of services by qualified health care providers
28 who can themselves obtain the protection of reasonably
29 priced and extensive liability coverage;

30 That in recent years, the cost of insurance coverage has
31 risen dramatically while the nature and extent of coverage
32 has diminished, leaving the health care providers and the
33 injured without the full benefit of professional liability
34 insurance coverage;

35 That many of the factors and reasons contributing to the
36 increased cost and diminished availability of professional
37 liability insurance arise from the historic inability of this
38 state to effectively and fairly regulate the insurance
39 industry so as to guarantee our citizens that rates are
40 appropriate, that purchasers of insurance coverage are not
41 treated arbitrarily, and that rates reflect the competency
42 and experience of the insured health care providers.

43 Therefore, the purpose of this enactment is to provide for
44 a comprehensive resolution of the matters and factors
45 which the Legislature finds must be addressed to
46 accomplish the goals set forth above. In so doing, the
47 Legislature has determined that reforms in the common law
48 and statutory rights of our citizens to compensation for
49 injury and death, in the regulation of rate making and other
50 practices by the liability insurance industry, and in the
51 authority of medical licensing boards to effectively regulate
52 and discipline the health care providers under such board
53 must be enacted together as necessary and mutual
54 ingredients of the appropriate legislative response.

§55-7B-2. Definitions.

1 (a) "Health care" means any act or treatment performed
2 or furnished, or which should have been performed or
3 furnished, by any health care provider for, to or on behalf of
4 a patient during the patient's medical care, treatment or
5 confinement.

6 (b) "Health care facility" means any clinic, hospital,
7 nursing home, or extended care facility in and licensed by
8 the state of West Virginia and any state operated institution
9 or clinic providing health care.

10 (c) "Health care provider" means a person, partnership,
11 corporation, facility or institution licensed by, or certified
12 in, this state or another state, to provide health care or
13 professional health care services, including, but not limited
14 to, a physician, osteopathic physician, hospital, dentist,
15 registered or licensed practical nurse, optometrist,
16 podiatrist, chiropractor, physical therapist, or
17 psychologist, or an officer, employee or agent thereof acting
18 in the course and scope of such officer's, employee's or
19 agent's employment.

20 (d) "Medical professional liability" means any liability
21 for damages resulting from the death or injury of a person
22 for any tort or breach of contract based on health care
23 services rendered, or which should have been rendered, by a
24 health care provider or health care facility to a patient.

25 (e) "Patient" means a natural person who receives or
26 should have received health care from a licensed health care
27 provider under a contract, expressed or implied.

28 (f) "Representative" means the spouse, parent,
29 guardian, trustee, attorney or other legal agent of another.

30 (g) "Noneconomic loss" means losses including, but not
31 limited to, pain, suffering, mental anguish and grief.

§55-7B-3. Elements of proof.

1 The following are necessary elements of proof that an
2 injury or death resulted from the failure of a health care
3 provider to follow the accepted standard of care:

4 (a) The health care provider failed to exercise that
5 degree of care, skill and learning required or expected of a
6 reasonable, prudent health care provider in the profession
7 or class to which the health care provider belongs acting in
8 the same or similar circumstances; and

9 (b) Such failure was a proximate cause of the injury or
10 death.

§55-7B-4. Health care injuries; limitations of actions; exceptions.

1 (a) A cause of action for injury to a person alleging
2 medical professional liability against a health care provider
3 arises as of the date of injury, except as provided in
4 subsection (b) of this section, and must be commenced
5 within two years of the date of such injury, or within two
6 years of the date when such person discovers, or with the
7 exercise of reasonable diligence, should have discovered
8 such injury, whichever last occurs: *Provided*, That in no
9 event shall any such action be commenced more than ten
10 years after the date of injury.

11 (b) A cause of action for injury to a minor, brought by or
12 on behalf of a minor who was under the age of ten years at
13 the time of such injury, shall be commenced within two
14 years of the date of such injury, or prior to the minor's
15 twelfth birthday, whichever provides the longer period.

16 (c) The periods of limitation set forth in this section
17 shall be tolled for any period during which the health care
18 provider or its representative has committed fraud or
19 collusion by concealing or misrepresenting material facts
20 about the injury.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated.

1 In any medical professional liability action against a
2 health care provider, no specific dollar amount or figure
3 may be included in the complaint, but the complaint may
4 include a statement reciting that the minimum
5 jurisdictional amount established for filing the action is
6 satisfied. However, any party defendant may at any time
7 request a written statement setting forth the nature and
8 amount of damages being sought. The request shall be
9 served upon the plaintiff who shall serve a responsive
10 statement as to the damages sought within thirty days
11 thereafter. If no response is served within the thirty days,
12 the party defendant requesting the statement may petition
13 the court in which the action is pending to order the
14 plaintiff to serve a responsive statement.

§55-7B-6. Pretrial procedures.

1 (a) In each medical professional liability action against
2 a health care provider, not less than nine nor more than
3 twelve months following the filing of answer by all
4 defendants, a mandatory status conference shall be held at
5 which, in addition to any matters otherwise required, the
6 parties shall:

7 (1) Inform the court as to the status of the action,
8 particularly as to the identification of contested facts and
9 issues and the progress of discovery and the period of time
10 for, and nature of, anticipated discovery; and

11 (2) On behalf of the plaintiff, certify to the court that
12 either an expert witness has or will be retained to testify on
13 behalf of the plaintiff as to the applicable standard of care
14 or that under the alleged facts of the action, no expert
15 witness will be required. If the court determines that expert
16 testimony will be required, the court shall provide a
17 reasonable period of time for obtaining an expert witness
18 and the action shall not be scheduled for trial, unless the
19 defendant agrees otherwise, until such period has
20 concluded. It shall be the duty of the defendant to schedule
21 such conference with the court upon proper notice to the
22 plaintiff.

23 (b) In the event that the court determines prior to trial
24 that either party is presenting or relying upon a frivolous or
25 dilatory claim or defense, for which there is no reasonable
26 basis in fact or at law, the court may direct in any final
27 judgment the payment to the prevailing party of reasonable
28 litigation expenses, including deposition and subpoena
29 expenses, travel expenses incurred by the party, and such
30 other expenses necessary to the maintenance of the action,
31 excluding attorney's fees and expenses.

§55-7B-7. Testimony of expert witness on standard of care.

1 The applicable standard of care and a defendant's failure
2 to meet said standard, if at issue, shall be established in
3 medical professional liability cases by the plaintiff by
4 testimony of one or more knowledgeable, competent expert
5 witnesses if required by the court. Such expert testimony
6 may only be admitted in evidence if the foundation,
7 therefor, is first laid establishing that: (a) The opinion is
8 actually held by the expert witness; (b) the opinion can be

9 testified to with reasonable medical probability; (c) such
10 expert witness possesses professional knowledge and
11 expertise coupled with knowledge of the applicable
12 standard of care to which his or her expert opinion,
13 testimony is addressed; (d) such expert maintains a current
14 license to practice medicine in one of the states of the
15 United States; and (e) such expert is engaged or qualified in
16 the same or substantially similar medical field as the
17 defendant health care provider.

§55-7B-8. Limit on liability for noneconomic loss.

1 In any medical professional liability action brought
2 against a health care provider, the maximum amount
3 recoverable as damages for noneconomic loss shall not
4 exceed one million dollars and the jury shall be so
5 instructed.

§55-7B-9. Effective date; applicability of provisions.

1 The provisions of this article shall not apply to injuries
2 which occur before the effective date of this article.

§55-7B-10. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such
3 invalidity shall not affect other provisions or applications
4 of this article, and to this end the provisions of this article
5 are declared to be severable.



CHAPTER 107

(H. B. 2183—By Delegate Schifano and Delegate Damron)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five,
chapter twenty-two of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to
amend article six of said chapter by adding thereto a
new section, designated section four-c; to amend and
reenact sections four, five, thirty-seven, thirty-nine,
forty-two, forty-three, forty-six, forty-nine and fifty-

three-a, article two, chapter twenty-two-a of said code; and to further amend said article two by adding thereto two new sections, designated sections fifty-three-b and fifty-three-c, all relating to coal mine health and safety; chairman of board of appeals required to subpoena witnesses; witnesses to receive daily witness fee, plus reasonable expenses in lieu of any lost wages; establishing a state coal mine safety and technical review committee and providing the purposes thereof; providing for appointment of members; terms and compensation; committee meetings; authority of committee to accept and make recommendations on requests for site-specific rule making and make recommendation on an industry-wide basis; relating to the powers and duties of the board of coal mine health and safety to promulgate regulations in accordance with recommendations made by the committee and the effect of such regulations; ventilation of mines and requiring an operator to provide safety committee with access to anemometers and smoke tubes; increasing distance between cross cuts for air; requiring that check curtains be substantially constructed of translucent material or have a window of such material; allowing director to authorize variances or waivers for ventilation and shelter holes; allowing a dispatcher to also serve as the responsible person and perform other duties; requiring self-propelled track haulage equipment to have certain equipment for de-energizing traction; requiring belt conveyors to be inspected by a certified belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss and specifying when inspections must be made; recording inspections; requiring the board of miner training and certification to establish criteria and standards for the training, examination and certification of "belt examiners" and specifying minimum requirements therefor; prohibiting persons from performing work within the confines of the cargo space of a crusher or feeder unless it has been de-energized and locked out; telephone service and communication facilities; specifying permissible percentage of methane; specifying approved apparatus for propane torches and other requirements for welding and cutting; required

voltage on battery powered equipment; manually operated valves and levers; dropping and coupling of railroad cars; access roads; inspections of mobile surface loading and haulage equipment; provision of safety equipment for prevention of falling; haulage on surface areas; traffic directions and warning signs on roads; construction and maintenance of haulage roads; ramp, tipples, cleaning plants and other surface areas; surface installations generally; machinery guards; fire protection; repairs of machinery; stairs and platforms; conveyors and crossovers; ladders; hoisting; and railroad track construction and maintenance.

Be it enacted by the Legislature of West Virginia:

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

Chapter

22. Energy.

22A. Mines and Minerals.

CHAPTER 22. ENERGY.

Article

5. Board of Appeals.

6. Board of Coal Mine Health and Safety.

ARTICLE 5. BOARD OF APPEALS.

§22-5-1. Board of appeals.

1 There is hereby continued a board of appeals, consist-
 2 ing of three members. Two members of the board shall
 3 be appointed by the governor, one person who by reason
 4 of previous training and experience may reasonably be
 5 said to represent the viewpoint of miners, and one
 6 person who by reason of previous training and
 7 experience may reasonably be said to represent the

8 viewpoint of the operators. The third person, who shall
9 be chairman of the board, and who must not have had
10 any connection at any time with the coal industry or an
11 organization representing miners, shall be selected by
12 the two members appointed by the governor. The term
13 of office of members of the board shall be five years.

14 The function and duties of the board shall be to hear
15 appeals, make determinations on questions of miners'
16 entitlements due to withdrawal orders and appeals from
17 discharge or discrimination, and suspension of certifica-
18 tion certificates.

19 The chairman of the board shall have the power to
20 administer oaths and subpoena witnesses and require
21 production of any books, papers, records or other
22 documents relevant or material to the appeal inquiry.

23 The chairman shall subpoena any witness requested
24 by a party to a hearing to testify or produce books,
25 records or documents. Any witness responding to a
26 subpoena so issued shall receive a daily witness fee to
27 be paid out of the state treasury upon a requisition of
28 the state auditor equivalent to the rate of pay under the
29 wage agreement currently in effect plus all reasonable
30 expenses for meals, lodging and travel at the rate
31 applicable to state employees. Any full payments as
32 hereinbefore specified shall be in full and exclusive
33 payment for meals, lodging, actual travel and similar
34 expenses and shall be made in lieu of any lost wages
35 occasioned by such appearance in connection with any
36 hearing conducted by the board.

37 Each member of the board shall receive one hundred
38 dollars per diem while actually engaged in the perfor-
39 mance of the work of the board. Each member shall be
40 reimbursed for all reasonable and necessary expenses
41 actually incurred during the performance of their
42 duties. Each member shall receive mileage expense
43 reimbursement at the rate established by rule and
44 regulation of the commissioner of the department of
45 finance and administration for in-state travel of public
46 employees. No reimbursement for expenses shall be
47 made except upon an itemized account, properly

48 certified by such members of the board. All reimbur-
49 sement for expenses shall be paid out of the state
50 treasury upon a requisition upon the state auditor.

51 Board members, before performing any duty, shall
52 take and subscribe to the oath required by section five,
53 article IV of the constitution of West Virginia.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

**§22-6-4c. Coal mine safety and technical review commit-
tee; membership; method of nomination and
appointment; meetings; quorum; powers and
duties of the committee; powers and duties of
the board of coal mine health and safety.**

1 (1) There is hereby established a state coal mine safety
2 and technical review committee. The purposes of this
3 committee are to:

4 (a) Assist the board of coal mine health and safety in
5 the development of technical data relating to mine
6 safety issues, including related mining technology;

7 (b) Provide suggestions and technical data to the
8 board and propose rules and regulations with general
9 mining industry application;

10 (c) Accept and consider petitions submitted by
11 individual mine operators or miners seeking site-specific
12 rule-making pertaining to individual mines and make
13 recommendations to the board concerning such rule-
14 making; and

15 (d) Provide a forum for the resolution of technical
16 issues encountered by the board.

17 (2) The committee shall consist of two members who
18 shall be residents of this state, and who shall be
19 appointed as hereinafter specified in this section:

20 (a) The governor shall appoint one member to repres-
21 ent the viewpoint of the coal operators in this state from
22 a list containing one or more nominees submitted by the
23 major trade association representing coal operators in
24 this state within thirty days of submission of such
25 nominee or nominees.

26 (b) The governor shall appoint one member to
27 represent the viewpoint of the working miners of this
28 state from a list containing one or more nominees
29 submitted by the highest ranking official within the
30 major employee organization representing coal mines
31 within this state within thirty days of submission of the
32 nominee or the nominees.

33 (c) The members appointed in accordance with the
34 provisions of subdivisions (a) and (b) of this subsection
35 shall be initially appointed to serve a term of three
36 years.

37 (d) The members appointed in accordance with the
38 provisions of subdivisions (a) and (b) of this subsection
39 may be, but are not required to be, members of the
40 board of coal mine health and safety, and shall be
41 compensated on a per diem basis in the same amount
42 as provided in section seven of this article, plus all
43 reasonable expenses.

44 (3) The committee shall meet at least once during each
45 calendar month, or more often as may be necessary.

46 (4) A quorum of the committee shall require both
47 members, and the committee may only act officially by
48 a quorum.

49 (5) The committee may review any matter relative to
50 mine safety and mining technology, and may pursue
51 development and resolution of issues related thereto.
52 The committee may make recommendations to the
53 board for the promulgation of rules and regulations with
54 general mining industry application. Upon receipt of a
55 unanimous recommendation for rule-making from the
56 committee and only thereon, the board may adopt or
57 reject such rules or regulations, without modification
58 except as approved by the committee: *Provided*, That
59 any adopted rule or regulation shall not reduce or
60 compromise the level of safety or protection below the
61 level of safety or protection afforded by applicable
62 statutes and regulations. When so promulgated, such
63 rules or regulations shall be effective, notwithstanding
64 the provisions of applicable statutes or regulations.

65 (6) (a) Upon application of a coal mine operator, or on
66 its own motion, the committee has the authority to
67 accept requests for site-specific rule-making on a mine-
68 by-mine basis, and make unanimous recommendations
69 to the board for site-specific rules and regulations
70 thereon. The committee has authority to approve a
71 request if it concludes that the request does not reduce
72 or compromise the level of safety or protection afforded
73 miners below the level of safety or protection afforded
74 by any applicable statutes or regulations. Upon receipt
75 of a request for site-specific rule-making, the committee
76 may conduct an investigation of the conditions in the
77 specific mine in question, which investigation shall
78 include consultation with the mine operator and
79 authorized representatives of the miners. Such
80 authorized representatives of the miners shall include
81 any person designated by the employees at the mine,
82 persons employed by an employee organization repres-
83 enting one or more miners at the mine, or a person
84 designated as a representative by one or more persons
85 at the mine.

86 (b) If the committee determines to recommend a
87 request made pursuant to subdivision (a) of this
88 subsection, the committee shall provide the results of its
89 investigation to the board of coal mine health and safety
90 along with recommendations for the development of the
91 site-specific rules and regulations applicable to the
92 individual mine, which recommendations may include a
93 written proposal containing draft rules and regulations.

94 (c) Within thirty days of receipt of the committee's
95 recommendation, the board shall adopt or reject,
96 without modification, except as approved by the
97 committee, the committee's recommendation to promul-
98 gate site-specific regulations applicable to an individual
99 mine, adopting such site-specific regulations only if it
100 determines that the application of the requested rule to
101 such mine will not reduce or compromise the level of
102 safety or protection afforded miners below that level of
103 safety or protection afforded by any applicable statutes
104 or regulations. When so promulgated, such rules or
105 regulations shall be effective notwithstanding the

106 provisions of applicable statutes or regulations.

107 (7) The board shall consider all regulations proposed
108 by the coal mine safety and technical review committee
109 and adopt or reject, without modification, except as
110 approved by the committee, such rules and regulations,
111 dispensing with the preliminary procedures set forth in
112 subdivisions (1) through (7), subsection (a), section four-
113 a; and, in addition, with respect to site-specific regula-
114 tions also dispensing with the procedures set forth in
115 subdivisions (4) through (8), subsection (c), section four
116 of this article.

117 (8) In performing its functions, the committee shall
118 have access to the services of the coal mine health and
119 safety administrator appointed under section four-b of
120 this article. The commissioner shall make clerical
121 support and assistance available in order that the
122 committee can carry out its duties. Upon the request of
123 both members of the committee, the health and safety
124 administrator shall draft proposed regulations and
125 reports or make investigations.

126 (9) The powers and duties provided for in this section
127 for the committee are not intended to replace or
128 precondition the authority of the board of coal mine
129 health and safety to act in accordance with sections one
130 through four-b and five through seven of this article.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 2. UNDERGROUND MINES.

- §22A-2-4. Ventilation of mines in general.
- §22A-2-5. Unused and abandoned parts of mine.
- §22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.
- §22A-2-39. Belt conveyors; installation; maintenance; examination of belt conveyors and belt entries.
- §22A-2-42. Telephone service or communication facilities.
- §22A-2-43. Electric equipment in mines.
- §22A-2-46. Welding and cutting.
- §22A-2-49. Safeguards for mechanical equipment.
- §22A-2-53a. Railroad cars; dumping areas; other surface areas.
- §22A-2-53b. Haulage or surface areas.
- §22A-2-53c. Ramps; tipples; cleaning plants; other surface areas.

§22A-2-4. Ventilation of mines in general.

1 (a) The operator or mine foreman of every coal mine,
2 whether worked by shaft, slope or drift, shall provide
3 and hereafter maintain for every such mine adequate
4 ventilation. In all mines the quantity of air passing
5 through the last open crosscut between the intake and
6 return in any pair or set of entries shall be not less than
7 nine thousand cubic feet of air per minute and as much
8 more as is necessary to dilute and render harmless and
9 carry away flammable and harmful gases. All working
10 faces in a working section between the intake and return
11 airway entries shall be ventilated with a minimum
12 quantity of three thousand cubic feet of air per minute
13 and as much more as is necessary to dilute and render
14 harmless and carry away flammable and harmful gases.
15 The quantity of air reaching the last crosscut in pillar
16 sections may be less than nine thousand cubic feet of air
17 per minute if at least nine thousand cubic feet of air per
18 minute is being delivered to the intake of the pillar line.
19 The air current shall under any conditions have a
20 sufficient volume and velocity to reduce and carry away
21 smoke from blasting and any flammable or harmful
22 gases. The operator shall provide to the safety commit-
23 tee access to anemometers and smoke tubes while
24 performing their duties. All active underground work-
25 ing places in a mine shall be ventilated by a current of
26 air containing not less than nineteen and five-tenths
27 percent of oxygen, not more than five-tenths percent of
28 carbon dioxide, and no harmful quantities of other
29 noxious or poisonous gases.

30 (b) Airflow shall be maintained in all intake and
31 return air courses of a mine, and where multiple fans
32 are used, neutral areas created by pressure equalization
33 between main fans shall not be permitted. Production
34 activities in working faces shall cease while tubing, line
35 brattice, or other ventilation devices are being installed
36 in by the machine operator.

37 (c) Properly installed and adequately maintained line
38 brattice or other approved devices shall be continuously
39 used from the last open crosscut of an entry or room of
40 each working section to provide adequate ventilation to

41 the working faces for the miners and to remove
42 flammable, explosive and noxious gases, dust and
43 explosive fumes. When damaged by falls or otherwise,
44 such line brattice or other devices shall be repaired
45 immediately.

46 (d) Brattice cloth used underground shall be of flame-
47 resistant material. The space between the line brattice
48 or other approved device and the rib shall be large
49 enough to permit the flow of a sufficient volume and
50 velocity of air to keep the working face clear of
51 flammable, explosive and noxious gases, dust and
52 explosive fumes.

53 (e) Each working unit newly developed in virgin coal
54 hereafter, shall be ventilated by a separate split of air:
55 *Provided*, That in areas already under development and
56 in areas where physical conditions prevent compliance
57 with this provision, the director may grant temporary
58 relief from compliance until such time as physical
59 conditions make compliance possible. The quantity of air
60 reaching the last crosscut shall not be less than nine
61 thousand cubic feet of air per minute and shall under
62 any condition have sufficient volume and velocity to
63 reduce and carry away smoke and flammable or
64 harmful gases from each working face in the section.

65 (f) As working places advance, crosscuts for air shall
66 be made not more than one hundred five feet apart.
67 Where necessary to render harmless and carry away
68 noxious or flammable gases, line brattice or other
69 approved methods of ventilation shall be used so as to
70 properly ventilate the face. All crosscuts between the
71 main intake and return airways not required for
72 passage of air and equipment shall be closed with
73 stoppings substantially built with incombustible or fire-
74 resistant material so as to keep working places well
75 ventilated. In mines where it becomes necessary to
76 provide larger pillars for adequate roof support,
77 working places shall not be driven more than two
78 hundred feet without providing a connection that will
79 allow the free flow of air currents. In such cases, a
80 minimum of twelve thousand cubic feet of air a minute
81 shall be delivered to the last open crosscut and as much

82 more as is necessary to dilute and render harmless and
83 carry away flammable and noxious gases.

84 (g) In special instances for the construction of
85 sidetracks, haulageways, airways, or openings in shaft
86 bottom or slope bottom layouts where the size and
87 strength of pillars is important, the director may issue
88 a permit approving greater distances. The permit shall
89 specify the conditions under which such places may be
90 driven.

91 (h) In all mines a system of bleeder openings on air
92 courses designed to provide positive movement of air
93 through and/or around abandoned or caved areas,
94 sufficient to prevent dangerous accumulation of gas in
95 such areas and to minimize the effect of variations in
96 atmospheric pressure shall be made a part of pillar
97 recovery plans projected after the first day of July, one
98 thousand nine hundred seventy-one.

99 (i) If a bleeder return is closed as a result of roof falls
100 or water during pillar recovery operations, pillar
101 operations may continue without reopening the bleeder
102 return if at least twenty thousand cubic feet of air per
103 minute is delivered to the intake of the pillar line.

104 (j) No operator or mine foreman shall permit any
105 person to work where he is unable to maintain the
106 quantity and quality of the air current as heretofore
107 required: *Provided*, That such provisions shall not
108 prohibit the employment of men to make the place of
109 employment safe.

110 (k) The ventilation of any mine shall be so arranged
111 by means of air locks, overcasts, or undercasts, that the
112 use of doors on passageways where men or equipment
113 travel may be kept to a minimum. Where doors are used
114 in a mine they shall be erected in pairs so as to provide
115 a ventilated air lock unless the doors are operated
116 mechanically.

117 (l) A crosscut shall be provided at or near the face of
118 each entry or room before such places are abandoned.

119 (m) Overcasts or undercasts shall be constructed of
120 incombustible material and maintained in good

121 condition.

122 (n) After the first day of January, one thousand nine
123 hundred eighty-seven, all run through check curtains
124 shall be substantially constructed of translucent mate-
125 rial, except that where belting material has to be used
126 because of high velocity, there shall be a window of
127 translucent material at least thirty inches square or one
128 half the height of the coal seam, whichever is less.

§22A-2-5. Unused and abandoned parts of mine.

1 (a) In any mine, all workings which are abandoned
2 after the first day of July, one thousand nine hundred
3 seventy-one, shall be sealed or ventilated. If such
4 workings are sealed, the sealing shall be done with
5 incombustible material in a manner prescribed by the
6 director, and one or more of the seals of every sealed
7 area shall be fitted with a pipe and cap or valve to
8 permit the sampling of gases and measuring of hydros-
9 tatic pressure behind the seals. For the purpose of this
10 section, working within a panel shall not be deemed to
11 be abandoned until such panel is abandoned.

12 (b) Air that has passed through an abandoned area or
13 an area which is inaccessible or unsafe for inspection
14 shall not be used to ventilate any working place in any
15 working mine, unless permission is granted by the
16 director with unanimous agreement of the technical and
17 mine safety review committee. Air that has been used
18 to ventilate seals shall not be used to ventilate any
19 working place in any working mine. No air which has
20 been used to ventilate an area from which the pillars
21 have been removed shall be used to ventilate any
22 working place in a mine, except that such air, if it does
23 not contain 0.25 volume percent or more of methane,
24 may be used to ventilate enough advancing working
25 places immediately adjacent to the line of retreat to
26 maintain an orderly sequence of pillar recovery on a set
27 of entries. Before sealed areas, temporary or permanent,
28 are reopened, the director shall be notified.

TRANSPORTATION

§22A-2-37. Haulage roads and equipment; shelter holes;

prohibited practices; signals; inspection.

1 (a) The roadbed, rails, joints, switches, frogs and other
2 elements of all haulage roads shall be constructed,
3 installed and maintained in a manner consistent with
4 the speed and type of haulage operations being con-
5 ducted to ensure safe operation. Where transportation of
6 personnel is exclusively by rail, track shall be main-
7 tained to within five hundred feet of the nearest working
8 face.

9 (b) Track switches, except room and entry develop-
10 ment switches, shall be provided with properly installed
11 throws, bridle bars and guardrails; switch throws and
12 stands, where possible, shall be placed on the clearance
13 side.

14 (c) Haulage roads on entries developed after the
15 effective date of this article shall have a continuous,
16 unobstructed clearance of at least twenty-four inches
17 from the farthest projection of any moving equipment
18 on the clearance side.

19 (d) On haulage roads where trolley lines are used, the
20 clearance shall be on the side opposite the trolley lines.

21 (e) On the trolley wire or "tight" side, after the
22 effective date of this article, there shall be at least
23 twelve inches of clearance from the farthest projection
24 of any moving equipment.

25 (f) Warning lights or reflective signs or tapes shall be
26 installed along haulage roads at locations of abrupt or
27 sudden changes in the overhead clearance.

28 (g) The clearance space on all haulage roads shall be
29 kept free of loose rock, coal, supplies or other material:
30 *Provided*, That not more than twenty-four inches need
31 be kept free of such obstructions.

32 (h) Ample clearance shall be provided at all points
33 where supplies are loaded or unloaded along haulage
34 roads or conveyors, which in no event shall be less than
35 twenty-four inches.

36 (i) Shelter holes shall be provided along haulage
37 entries driven after the effective date of this article

38 where locomotive, rope or animal haulage is used. Such
39 shelter holes shall be spaced not more than one hundred
40 feet apart, except when variances are authorized by the
41 director with unanimous agreement of the mine safety
42 and technical review committee. Shelter holes shall be
43 on the side of the entry opposite the trolley wire except
44 that shelter holes may be on the trolley wire and feeder
45 wire side if the trolley wire and feeder wire are guarded
46 in a manner approved by the director.

47 (j) Shelter holes made after the effective date of this
48 article, unless the director with unanimous agreement
49 of the mine safety and technical review committee
50 grants a waiver, shall be at least five feet in depth, not
51 more than four feet in width, and as high as the
52 traveling space. Room necks and crosscuts may be used
53 as shelter holes even though their width exceeds four
54 feet.

55 (k) Shelter holes shall be kept clear of refuse and other
56 obstructions.

57 (l) After the effective date of this article, shelter holes
58 shall be provided at switch throws and manually
59 operated permanent doors.

60 (m) No steam locomotive shall be used in mines where
61 miners are actually employed in the extraction of coal,
62 but this shall not prevent operation of a steam locomotive
63 through any tunnel haulway or part of a mine that
64 is not in actual operation and producing coal.

65 (n) Underground equipment powered by internal
66 combustion engines using petroleum products, alcohol,
67 or any other compound shall not be used in a coal mine.

68 (o) Locomotives, personnel carriers, mine cars, supply
69 cars, shuttle cars, and all other haulage equipment shall
70 be maintained in a safe operating condition. Each
71 locomotive, personnel carrier, barrier tractor and other
72 related equipment shall be equipped with a suitable
73 lifting jack and handle. An audible warning device and
74 headlights shall be provided on each locomotive and
75 each shuttle car. All other mobile equipment, using the
76 face areas of the mine, purchased after the effective date

77 of this article, shall be provided with a conspicuous light
78 or other approved device so as to reduce the possibility
79 of collision.

80 (p) No persons other than those necessary to operate
81 a trip or car shall ride on any loaded car or on the
82 outside of any car. Where pusher locomotives are not
83 used, the locomotive operator shall have an assistant to
84 assist him in his duties.

85 (q) The pushing of trips, except for switching purposes,
86 is prohibited on main haulage roads: *Provided*, That
87 nothing herein shall prohibit the use of a pusher
88 locomotive to assist the locomotive pulling a trip.
89 Motormen and trip riders shall use care in handling
90 locomotives and cars. It shall be their duty to see that
91 there is a conspicuous light on the front and rear of each
92 trip or train of cars when in motion: *Provided, however*,
93 That trip lights need not be used on cars being shifted
94 to and from loading machines, on cars being handled at
95 loading heads during gathering operations at working
96 faces, or on trips being pulled by animals. No person
97 except the operator or his assistant shall ride on
98 locomotives or loaded cars. An empty car or cars shall
99 be used to provide a safe distance between the
100 locomotive and the material car when rail, pipe or long
101 timbers are being hauled. A safe clearance shall be
102 maintained between the end car or trips placed on side
103 tracks and moving traffic. On haulage roads the
104 clearance point shall be marked with an approved
105 device.

106 (r) No motorman, trip rider or brakeman shall get on
107 or off cars, trips or locomotives while they are in motion,
108 except that a trip rider or brakeman may get on or off
109 the rear end of a slowly moving trip or the stirrup of
110 a slowly moving locomotive to throw a switch, align a
111 derail or open or close a door.

112 (s) Flying or running switches and riding on the front
113 bumper of a car or locomotive are prohibited. Back
114 poling shall be prohibited except with precaution to the
115 nearest turning point (not over eighty feet), or when
116 going up extremely steep grades and then only at slow

117 speed. The operator of a shuttle car shall face in the
118 direction of travel except during the loading operation
119 when he shall face the loading machine.

120 (t) (1) A system of signals, methods or devices shall
121 be used to provide protection for trips, locomotives and
122 other equipment coming out onto tracks used by other
123 equipment.

124 (2) In any coal mine where more than three hundred
125 fifty tons of coal are produced on any shift in each
126 twenty-four hour period, a dispatcher shall be on duty
127 when there are movements of track equipment under-
128 ground, including time when there is no production of
129 coal. Such traffic shall move only at the direction of the
130 dispatcher.

131 (3) The dispatcher's only duty shall be to direct traffic:
132 *Provided*, That the dispatcher's duties may also include
133 those of the responsible person required by section forty-
134 two of this article: *Provided, however*, That the dis-
135 patcher may perform other duties which do not interfere
136 with his dispatching responsibilities and do not require
137 him to leave the dispatcher's station except as approved
138 by the mine safety and technical review committee.

139 (4) Any dispatcher's station provided after the
140 effective date of this article shall be on the surface.

141 (5) All self-propelled track equipment shall be
142 equipped with two-way communications.

143 (u) Motormen shall inspect locomotives, and report
144 any mechanical defects found to the proper supervisor
145 before a locomotive is put in operation.

146 (v) A locomotive following another trip shall maintain
147 a distance of at least three hundred feet from the rear
148 end of the trip ahead, unless such locomotive is coupled
149 to the trip ahead.

150 (w) Positive stopblocks or derails shall be installed on
151 all tracks near the top and at landings of shafts, slopes,
152 and surface inclines. Positive-acting stopblocks or
153 derails shall be used where necessary to protect persons
154 from danger of runaway haulage equipment.

155 (x) Shuttle cars shall not be altered by the addition
156 of sideboards so as to inhibit the view of the operator.

157 (y) Mining equipment shall not be parked within
158 fifteen feet of a check curtain or fly curtain.

159 (z) All self-propelled track haulage equipment shall be
160 equipped with an emergency stop switch, self centering
161 valves, or other devices designed to de-energize the
162 traction motor circuit in the event of an emergency:
163 *Provided*, That such equipment in operation in a mine
164 on or before the first day of January, one thousand nine
165 hundred eighty-seven, shall not be required to be
166 retrofitted. On or before the first day of January, one
167 thousand nine hundred eighty-seven, all track mounted
168 equipment shall be equipped with trolley pole swing
169 limiters or other means approved by the mine safety and
170 technical review committee to restrict movement of the
171 trolley pole when it is disengaged from the trolley wire.
172 Battery powered mobile equipment shall have the
173 operating controls clearly marked to distinguish the
174 forward and reverse positions.

**§22A-2-39. Belt conveyors; installation; maintenance;
examination of belt conveyors and belt
entries.**

1 (a) On or after the first day of July, one thousand nine
2 hundred seventy-one, all conveyor belts acquired for use
3 underground shall be flame-resistant conveyor belts.

4 (b) A clear travelway at least twenty-four inches wide
5 shall be provided on both sides of all belt conveyors
6 installed after the first day of July, one thousand nine
7 hundred seventy-one. Where roof supports are installed
8 within twenty-four inches of a belt conveyor, a clear
9 travelway at least twenty-four inches wide shall be
10 provided on the side of such support farthest from the
11 conveyor.

12 (c) On belt conveyors that do not transport men, stop
13 and start controls shall be installed at intervals not to
14 exceed one thousand feet. Such controls shall be
15 properly installed and positioned so as to be readily
16 accessible.

17 (d) Persons shall not cross moving belt conveyors,
18 except where suitable crossing facilities are provided.

19 (e) All belt conveyors shall be inspected by a certified
20 belt examiner, mine foreman-fireboss or assistant mine
21 foreman-fireboss for frozen rollers and fire hazards
22 following the last production shift each week, also before
23 holidays, vacation periods, as hereinafter provided, with
24 records kept of daily inspection.

25 (f) (1) Belt conveyors on which coal is transported on
26 any shift shall be examined during each coal-producing
27 shift. Such examination shall be made of belt conveyors
28 and belt conveyor entries for unsafe conditions includ-
29 ing, but not limited to, mine gases, frozen rollers,
30 hazardous roof or rib conditions and fires.

31 (2) Whenever an on-shift examination of a belt
32 conveyor and belt conveyor entry has not been made
33 during the preceding shift, an examination shall be
34 made of the belt conveyor and belt conveyor entry prior
35 to the conveyor being started; or if any miner is going
36 to enter the belt conveyor entry, then the area where
37 such miner will be working shall be examined. Such
38 examination shall be made by a certified mine foreman-
39 fireboss, assistant mine foreman-fireboss, or a certified
40 belt examiner. Thereafter, on-shift examinations by a
41 certified belt examiner, mine foreman-fireboss or
42 assistant mine foreman-fireboss shall be made as herein
43 required.

44 (g) In the conduct of the examination, the belt
45 examiner, mine foreman-fireboss or assistant mine
46 foreman-fireboss shall travel the full extent of the belt
47 conveyor or belt conveyor entry assigned and shall place
48 his initials and the date and time of his examination at
49 or near each belt head and along each belt conveyor he
50 examines. Should the belt examiner, mine foreman-
51 fireboss or assistant mine foreman-fireboss find a
52 condition which he considers dangerous to persons
53 entering such area, he shall erect a danger sign to
54 prevent other persons from entering the area and notify
55 his immediate supervisor of the condition. Only state or
56 federal inspectors or authorized representatives of the

57 miners, and persons authorized by mine management to
58 correct the condition, may enter such area while the
59 danger sign is posted. At the conclusion of each shift,
60 belt examiners, mine foreman-firebosses or assistant
61 mine foreman-firebosses shall record in a book provided
62 for that purpose the results of their examination,
63 including comments concerning the physical condition
64 of the belt conveyor and the area where the belt
65 conveyor is located. Such book shall be examined and
66 countersigned by the mine foreman or his assistant and
67 by the person conducting such examination on the next
68 oncoming shift.

69 (h) The examinations set forth in this section shall be
70 the only examinations required of belt conveyors and
71 belt conveyor entries, notwithstanding any provision of
72 sections fourteen, twenty or any other section of this
73 chapter relating to the examination of belt conveyors
74 and belt conveyor entries.

75 (i) The board of miner training, education and
76 certification shall establish criteria and standards for
77 the training, examination and certification of "belt
78 examiners." Persons seeking to be certified as a "belt
79 examiner" must hold a miner's certificate and have at
80 least two years practical underground mining expe-
81 rience. Such training, examination and certification
82 program shall, as a minimum, require a demonstration
83 of knowledge of belt conveyors, roof control, ventilation
84 and gases.

85 (j) Deluge-type water sprays, water sprinklers, dry
86 chemical sprinkler system or foam generators (designed
87 to be automatically activated in the event of a fire or
88 rise in the temperature at or near the belt drive) shall
89 be installed at each main and secondary conveyor drive
90 that are located underground.

91 (k) All underground belt conveyors shall be equipped
92 with slippage and sequence switches.

93 (l) Telephone and other suitable communications shall
94 be provided at points where supplies are regularly
95 loaded or unloaded from the belt conveyors.

96 (m) After supplies have been transported on belt
97 conveyors, such belts shall be examined by a belt
98 examiner, mine foreman-fireboss or assistant mine
99 foreman-fireboss for unsafe conditions prior to the
100 transportation of men.

101 (n) No person shall be permitted to perform any work
102 within the confines of the cargo space of a crusher or
103 feeder, unless the crusher or feeder has been de-
104 energized and locked out.

§22A-2-42. Telephone service or communication facilities.

1 Telephone service or equivalent two-way communica-
2 tion facilities shall be provided in all mines at least one
3 of which shall be in service at all times as follows:

4 (a) A telephone or equivalent two-way communication
5 facility shall be located on the surface within five
6 hundred feet of all main portals, and shall be installed
7 either in a building or in a box-like structure designed
8 to protect the facilities from damage by inclement
9 weather. At least one of these communication facilities
10 shall be at a location where a responsible person who
11 is always on duty when miners are underground can
12 hear the facility and respond immediately in the event
13 of an emergency. "Two-way communication facility"
14 shall mean a system maintained to allow voice contact
15 to come in and out of the working section at all times.

16 (b) (1) Telephones or equivalent two-way communica-
17 tion facilities provided at each working section shall be
18 located not more than five hundred feet outby the last
19 open crosscut and not more than eight hundred feet
20 from the farthest point of penetration of the working
21 places on such section.

22 (2) The incoming communication signal shall activate
23 an audible alarm, distinguishable from the surrounding
24 noise level, or a visual alarm that can be seen by a miner
25 regularly employed on the working section.

26 (3) If a communication system other than telephones
27 is used and its operation depends entirely upon power
28 from the mine electric system, means shall be provided

29 to permit continued communication in the event the
30 mine electric power fails or is cut off: *Provided*, That
31 where trolley phones and telephones are both used, an
32 alternate source of power for the trolley phone system
33 is not required.

34 (4) Telephones or equivalent two-way communication
35 facilities shall be maintained in good operating condi-
36 tion at all times. In the event of any failure in the system
37 that results in loss of communication, repairs shall be
38 started immediately, and the system restored to operat-
39 ing condition as soon as possible.

40 (5) Where required by the director, trucks used for
41 haulage of coal, miners, or supplies by an operator shall
42 be equipped with two-way communication instruments.

43 (c) On or after the first day of January, one thousand
44 nine hundred seventy-eight, unless the director for good
45 cause grants a waiver, all such telephone or equivalent
46 two-way communications shall be connected to regular
47 telephonic and other means of communication available
48 in the community so that in the event of an emergency,
49 emergency medical attendants or other personnel can
50 communicate to and from the mine directly to health
51 care facilities.

52 (d) Telephone lines and cables shall be carried on
53 insulators installed on the opposite side from power or
54 trolley wires, and where they cross power or trolley
55 wires, they shall be insulated adequately. Lightning
56 arrestors shall be provided at the points where telephone
57 circuits enter the mine.

§22A-2-43. Electric equipment in mines.

1 (a) Electric equipment shall not be taken into or
2 operated in any place where methane can be detected
3 with a flame safety lamp or other approved methane
4 detector at one percent or more at any point not less
5 than eight inches from the roof, face, or rib.

6 (b) In all mines, electric haulage locomotives operated
7 from trolley wire and other electrical equipment or
8 devices which may ignite gas shall not be used in return
9 air, unless permission is granted by the director for a

10 specified area. For the purpose of this provision, air
11 used to ventilate a section of mine shall not be consi-
12 dered return air until such time as the air has ventilated
13 all of the workings in the section.

14 (c) No person shall be placed in charge of a coal-
15 cutting machine in any mine who is not a qualified
16 person, capable of determining the safety of the roof and
17 sides of the working places and of detecting the presence
18 of explosive gas, unless they are accompanied by a
19 certified or qualified person who has passed such an
20 examination.

21 (d) In any mine no machine shall be brought in by the
22 last breakthrough next to the working face until the
23 machine man shall have made an inspection for gas in
24 the place where the machine is to work. If explosive gas
25 in excess of one percent is found in the place, the
26 machine shall not be taken in until the danger is
27 removed.

28 (e) In working places a safety lamp, or other suitable
29 approved apparatus for the detection of explosive gas,
30 shall be provided for use with each mining machine
31 when working, and should any indication of explosive
32 gas in excess of one percent appear on the flame of the
33 safety lamp, or on other apparatus used for the detection
34 of explosive gas, the person in charge shall immediately
35 stop the machine, cut off the current at the nearest
36 switch and report the condition to the mine foreman or
37 supervisor. The machine shall not again be started in
38 such place until the condition found has been corrected
39 and has been pronounced safe by a certified person.

40 (f) No electric equipment shall be operated in a mine
41 for a longer period than twenty minutes without an
42 examination as above described being made for gas; and
43 if gas is found in excess of one percent, the current shall
44 at once be switched off the machine, and the trailing
45 cable shall forthwith be disconnected from the power
46 supply until the place is pronounced safe.

47 (g) Machine runners and helpers shall use care while
48 operating mining machines. They shall not permit any
49 person to remain near the machine while it is in

50 operation. They shall examine the roof of the working
51 place to see that it is safe before starting to operate the
52 machine. They shall not move the machine while the
53 cutter chain is in motion.

§22A-2-46. Welding and cutting.

1 (a) A record shall be kept of oxygen and gas tanks or
2 cylinders taken into a mine and the date shall be
3 recorded when they are removed from the mine. No
4 more tanks or cylinders than necessary to perform the
5 work efficiently shall be permitted underground at one
6 time.

7 (b) Propane torches may be used in lieu of blow-
8 torches. Only approved apparatus such as torches,
9 regulators, pressure reducing valves, hoses, check valves
10 and gas cylinders shall be used.

11 (c) Welding and cutting may be done in mines:
12 *Provided*, That all equipment and gauges are main-
13 tained in safe condition and not abused, that suitable
14 precautions are taken against ignition of methane, coal
15 dust, or combustible materials, that means are provided
16 for prompt extinguishment of fires accidentally started,
17 and that only persons who have demonstrated compet-
18 ency in welding and cutting are entrusted to do this
19 work. Adequate eye protection shall be used by all
20 persons doing welding or cutting, and precautions shall
21 be taken to prevent other persons from exposure that
22 might be harmful to their eyes. A suitable wrench
23 designed for compressed tanks shall be provided to the
24 person authorized to use the equipment.

25 (d) Transportation of oxygen and gas tanks or
26 cylinders shall be permitted on self-propelled machinery
27 or belt conveyors specially equipped for safe holding for
28 the containers in transportation. In no instance shall
29 such transportation be permitted in conjunction with
30 any man trip.

31 (e) Empty oxygen and gas tanks or cylinders shall be
32 marked "empty" and shall be removed from the mine
33 promptly in safe containers provided for transportation
34 of the same.

35 (f) When tanks and cylinders are not in use and when
36 they are being transported, valve protection caps and
37 plugs shall be placed on all tanks or cylinders for which
38 caps and plugs are available. No oxygen tanks, gas
39 tanks or cylinders shall be transported with the hoses
40 and gauges attached thereto.

41 (g) In all mines a certified person, pursuant to section
42 twelve of this article, shall examine for gas with
43 permissible flame safety lamps or other approved
44 detectors before and during welding or cutting. The
45 safety of the equipment and methods used in such cases
46 shall be subject to approval of the director. If equipment
47 is mobile, it shall be removed outby the last open
48 breakthrough before cutting and welding may be
49 performed on such equipment.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22A-2-49. Safeguards for mechanical equipment.

1 (a) The cutter chains of mining machines shall be
2 locked securely by mechanical means or electrical
3 interlocks while such machines are parked or being
4 trammed. Loading machines shall not be trammed with
5 loading arms in motion, except when loading materials.

6 (b) Belt, chain or rope drives and the moving parts
7 of machinery which are within seven feet of the floor,
8 ground or platform level, unless isolated, shall be
9 guarded adequately. Repair pits shall be kept covered
10 or guarded at all times when not in use. Machinery shall
11 not be lubricated or repaired while in motion, except
12 where safe remote lubricating devices are used. Machin-
13 ery shall not be started until the person lubricating or
14 repairing it has given a clear signal. Guards which have
15 been removed shall be replaced before the machinery is
16 again put into use. Provision shall be made to prevent
17 accumulations of spilled lubricants.

18 (c) Mechanically operated grinding wheels shall be
19 equipped with safety washers, substantial retaining
20 hoods, and, unless goggles are used, eye shields.

21 (d) No person shall stand along the side of the boom,

22 or pass or stand along the loading head or cutting head,
23 on a continuous miner or loading machine in operation.

24 (e) Braking devices shall be guarded to prevent
25 accidental release. When required by the director,
26 track-mounted mobile equipment shall be equipped with
27 workable standing devices.

28 (f) All battery powered equipment shall be equipped
29 with an under-voltage indicator which will indicate
30 when the voltage is less than three fourths of its rated
31 capacity, at which time such equipment shall be
32 withdrawn from use except for the purpose of returning
33 the vehicle to the recharging station.

34 (g) On or after the first day of January, one thousand
35 nine hundred eighty-eight, all manually operated valves
36 and levers of equipment of the same manufacturer and
37 model shall have the same direction of activation and
38 direction of operations.

MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

§22A-2-53a. Railroad cars; dumping areas; other surface areas.

1 (1) Employees handling railroad cars shall have access
2 to and use an approved distinct audible signaling device
3 to give warning when cars are in motion. Safety belts
4 shall be worn and properly attached by all car droppers
5 handling railroad cars. Railroad cars shall be
6 maintained under control at all times. Cars shall be
7 dropped at a safe rate of speed and in such a manner
8 that will ensure the car dropper maintains a safe
9 position while working and traveling around the car.
10 Railroad cars shall not be coupled or uncoupled
11 manually from the inside of curves unless the railroad
12 and cars are so designed to eliminate any hazard from
13 coupling or uncoupling cars from inside of curves.

14 (2) All dumping ramps shall be of a sufficient width
15 to ensure safe operation of vehicles used thereon.

16 (3) All access roads leading to and from bath houses,
17 portals, and other areas on which persons are expected

18 to travel to and from work, shall be of sufficient width
19 and be maintained in good condition. On haulage roads,
20 guardrails or berms shall be provided on the outer bank
21 of all elevated roadways.

22 (4) Mobile surface loading and haulage equipment
23 shall be inspected by a competent person before such
24 equipment is placed into operation. Equipment defects
25 affecting safety shall be corrected before the equipment
26 is used.

27 (5) Safety protection, such as safety belts, lifelines, or
28 lanyards to prevent a person from falling shall be
29 provided at all times that miners are working in an area
30 where the potential fall distance exceeds fifteen feet,
31 except that safety belts shall not be used where they are
32 impractical or would pose a greater hazard. Safety nets
33 shall be provided when work places are more than
34 twenty-five feet above the ground where the use of
35 ladders, scaffolds, catch platforms, temporary floors,
36 safety lines, or safety belts is impractical.

§22A-2-53b. Haulage or surface areas.

1 (1) Traffic directions which differ from standard
2 highways practice shall be posted on signs along the
3 haulage roads at strategic points in letters at least three
4 inches high.

5 (2) Well marked signs conspicuously placed, shall be
6 properly located to alert drivers to existing danger
7 areas, such as the approach to a dangerous curve or an
8 extreme grade.

9 (3) Traffic rules, signals and warning signs shall be
10 standardized at each mine.

11 (4) Where side or overhead clearances on haulage
12 roads or loading or dumping locations are hazardous to
13 mine workers, such areas shall be conspicuously marked
14 and warning devices shall be installed when necessary
15 to ensure the safety of the workers.

16 (5) Flashers, flares, or other means of signaling shall
17 be used to warn approaching drivers of a hazard created
18 by an obstruction in the roadway.

19 (6) Regulatory signs shall be used to indicate the
20 required method of traffic movement.

21 (7) Posted warning signs shall be used where neces-
22 sary to indicate potential hazardous conditions.

23 (8) Object marking shall be used to mark physical
24 obstructions in or near the haulageway that presents
25 possible hazards.

26 (9) All signs and markings shall be displayed and
27 utilized so as to be as effective as possible.

28 (10) Where side or overhead clearance on any haulage
29 road or at any loading or dumping location at a surface
30 mine is hazardous to any person, such hazard shall be
31 corrected immediately, and all necessary precautions
32 taken while such hazard is being corrected.

33 (11) Haulage roads shall be located an adequate
34 distance from highwalls and spoil banks to minimize the
35 danger of falling material onto personnel and
36 equipment.

37 (12) When dust created by haulage is thrown into
38 suspension in such quantities that may obscure the
39 vision of the operators of vehicles, an adequate means
40 shall be taken to allay such dust.

41 (13) Only authorized persons shall be permitted on
42 haulage roads and at loading or dumping locations.

43 (14) Berms or guards shall be provided where
44 required on the outer bank of elevating roadways.

45 (15) The width and grade to be utilized in haulage
46 road construction shall be determined for each specific
47 situation based upon terrain configuration, vehicle
48 characteristics and driver visibility for safe haulage.

49 (16) Haulage roads shall be constructed of sufficient
50 width to permit the driver to maneuver his vehicle to
51 avoid striking unexpected obstacles on the roadway
52 where reclamation regulations permit.

53 (17) Provisions shall be made to adequately drain and
54 remove excessive water from the haulage roads.

55 (18) Haulage roads shall be constructed, installed and
56 maintained in a manner consistent with the speed and
57 type of haulage operations being conducted to ensure
58 safe operation. All roads leading to and from work sites
59 on which persons are expected to travel to and from
60 work or to haul coal or supplies, shall be of sufficient
61 width and be maintained in good condition.

62 (19) Haulage operations shall be stopped when the
63 haulage surface has deteriorated to the extent that it
64 presents a danger to the safety of the haulage operation.

65 (20) All haulage vehicles placed into service after the
66 effective date of this section shall be equipped with an
67 approved supplementary emergency braking system.

68 (21) All power lines constructed over haulage roads
69 after the effective date of this section shall be main-
70 tained at a minimum of twelve feet above all equipment
71 used on haulage roads, including dump trucks in a
72 raised position.

**§22A-2-53c. Ramps; tipples; cleaning plants; other sur-
face areas.**

1 (1) Surface installations generally—Surface installa-
2 tions, all general mine structures, enclosures and other
3 facilities, including custom coal preparation facilities
4 shall be maintained in good condition. In unusually
5 dusty locations, electric motors, switches and controls
6 shall be of dust-tight construction, or enclosed with
7 reasonable dust-tight housings or enclosures. Openings
8 in surface installations through which men or material
9 may fall shall be protected by railings, barriers, covers
10 or other protective devices. Illumination sufficient to
11 provide safe working conditions shall be provided in and
12 on all surface structures, paths, walkways, switch
13 panels, loading and dumping sites, working areas and
14 parking areas. Materials shall be stored and/or stacked
15 in a manner to prevent stumbling or falling.
16 Compressed and liquid gas cylinders shall be secured in
17 a safe manner. Adequate ventilation shall be provided
18 in tipples and preparation plants. Coal dust in or around
19 tipples or cleaning plants shall not be permitted to exist
20 or accumulate in dangerous amounts.

21 (2) Machinery guards—Gears, sprockets, chains, drive
22 head, tail and takeup pulleys, flywheels, couplings,
23 shafts, sawblades, fan inlets, and similar exposed
24 moving machine parts with which persons may come in
25 contact shall be guarded adequately. Except when
26 testing is necessary, machinery guards shall be secured
27 in place while being operated. Belt rollers shall not be
28 cleaned while belts are in motion.

29 (3) Fire protection—Where cutting or welding is
30 performed at any location, a means of prompt extin-
31 guishment of any fire accidentally started shall be
32 provided. Adequate fire-fighting facilities, required by
33 the department of energy, shall be provided on all floors.
34 At least two exits shall be provided for every floor of
35 tipples and cleaning plants constructed after the
36 effective date of this section. Signs warning against
37 smoking and open flames shall be posted so they can be
38 readily seen in areas or places where fire or explosion
39 hazards exist. Smoking or an open flame in or about
40 surface structures shall be restricted to locations where
41 it will not cause fire or an explosion.

42 (4) Repairs of machinery—Machinery shall not be
43 lubricated or repaired while in motion, except where
44 safe remote lubricating devices are used. Machinery
45 shall not be started until the person lubricating or
46 repairing it has given a clear signal. Means and methods
47 shall be provided to assure that structures and the
48 immediate area surrounding the same shall be
49 reasonably free of coal dust accumulations. Where
50 repairs are made to tipples, or cleaning plants, proper
51 scaffolding and proper overhead protection shall be
52 provided for workmen when necessary. Where overhead
53 repair work is being performed at surface installations,
54 adequate protection shall be provided for all persons
55 working or passing below.

56 (5) Stairs, platforms, etc.—Stairways, elevated plat-
57 forms and runways shall be equipped with handrails.
58 Railroad car trimmer platforms are exempted from
59 such requirements. Where required, elevated platforms
60 and stairways shall be provided with toeboards. They
61 shall be kept clear of refuse and ice and maintained in

62 good condition.

63 (6) Belts, etc.—Drive belts shall not be shifted while
64 in motion unless such machines are provided with
65 mechanical shifters. Belt dressing shall not be applied
66 while in motion. Belts, chains and ropes shall not be
67 guided into power-driven moving pulleys, sprockets or
68 drums with the hand except with equipment especially
69 designed for hand feeding.

70 (7) Conveyors and crossovers—When the entire length
71 of a conveyor is visible from the starting switch, the
72 operator shall visually check to make certain that all
73 persons are in the clear before starting the conveyor.
74 When the entire length of the conveyor is not visible
75 from the starting switch, a positive audible or visible
76 warning system shall be installed and operated to warn
77 persons when the conveyor will be started. Crossovers
78 shall be provided where necessary to cross conveyors.
79 All crossovers shall be of substantial construction, with
80 rails, and maintained in good condition. Moving convey-
81 ors shall be crossed only at designated crossover points.
82 A positive audible or visible warning system shall be
83 installed and operated to warn persons that a conveyor
84 or other tippie equipment is to be started. Pulleys of
85 conveyors shall not be cleaned manually while the
86 conveyor is in operation. Guards, nets or other suitable
87 protection shall be provided where tramways pass over
88 roadways, walkways or buildings. Where it is required
89 to cross under a belt, adequate means shall be taken to
90 prohibit a person from making contact with a moving
91 part.

92 (8) Ladders—All ladders shall be securely fastened.
93 Permanent ladders more than ten feet in height shall
94 be provided with backguards. Ladders shall be of
95 substantial construction and maintained in good condi-
96 tion. Wooden ladders shall not be painted. Fixed ladders
97 shall not incline backward at any point unless equipped
98 with backguards. Fixed ladders shall be anchored
99 securely and installed with at least three inches of toe
100 clearance. Side rails of fixed ladders shall project at
101 least three feet above landings, or substantial handholds
102 shall be provided above the landing. No person shall be

103 permitted to work off of the top step of any ladder.
104 Metal ladders shall not be used with electrical work,
105 where there is danger of the ladder coming into contact
106 with power lines or an electrical conductor. The
107 maximum length of a step ladder shall be twenty feet
108 and an extension ladder sixty feet.

109 (9) Hoisting—Hitches and slings used to hoist mate-
110 rials shall be suitable for handling the type of material
111 being hoisted. Persons shall stay clear of hoisted loads.
112 Tag lines shall be attached to hoisted materials that
113 require steadying or guidance. A hoist shall not lift
114 loads greater than the rated capacity of the hoist being
115 used.

116 (10) Railroad track construction and maintenance—

117 (a) All parts of the track haulage road under the
118 ownership or control of the operator shall be strictly
119 constructed and maintained. Rails shall be secured at all
120 points by means of plates or welds. When plates are
121 used, plates conforming with the weight of the rail shall
122 be installed and broken plates shall be replaced
123 immediately. Appropriate bolts shall be inserted and
124 maintained in all bolt holes. The appropriate number of
125 bolts conforming with the appropriate rail plate for the
126 weight of the rail shall be inserted, tightly secured, and
127 maintained.

128 (b) All points shall be installed and maintained so as
129 to prevent bad connections. Varying weights of rail shall
130 not be joined without proper adapters. Tracks shall be
131 blocked and leveled and so maintained so as to prevent
132 high and low joints.

133 (c) Tracks shall be gauged so as to conform with the
134 track mounted equipment. Curves shall not be con-
135 structed so sharp as to put significant pressure on the
136 tracks of the track mounted equipment.

137 (d) Severely worn or damaged rails and ties shall be
138 replaced immediately.

139 (e) When mining operations are performed within any
140 twenty-four hour period, operations shall be inspected at
141 least every twenty-four hours to assure safe operation

142 and compliance with the law and regulations. The
143 results of which inspection shall be recorded.

144 (f) Personnel who are required frequently and regu-
145 larly to travel on belts or chain conveyors extended to
146 heights of more than ten feet shall be provided with
147 adequate space and protection in order that they may
148 work safely. Permanent ladders extending more than
149 ten feet shall be provided with backguards. Walkways
150 around thickeners that are less than four feet above the
151 walkway shall be adequately guarded. Employees
152 required to work over thickener shall wear a safety
153 harness adequately secured, unless walkways or other
154 suitable safety devices are provided.

CHAPTER 108

(Com. Sub. for S. B. 619—By Senators Rogers and Shaw)

[Passed March 7, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article seven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and three, article eight of said chapter; and to amend and reenact section one, article one, chapter twenty-two-b of said code, all relating to oil and gas wells generally; the definitions of "deep wells" and "shallow wells"; and permitting shallow well operators to drill into the upper portion of the uppermost Onondaga Group for certain purposes.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article seven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and three, article eight of said chapter be amended and reenacted; and that section one, article one, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

Chapter

22. Energy.

22B. Oil and Gas.

CHAPTER 22. ENERGY.**Article**

- 7. Shallow Gas Well Review Board.
- 8. Oil and Gas Conservation.

ARTICLE 7. SHALLOW GAS WELL REVIEW BOARD.

§22-7-2. Definitions.

§22-7-3. Application of article; exclusions.

§22-7-2. Definitions.

- 1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
- 3 (1) "Board" means the West Virginia shallow gas well
4 review board provided for in section four of this article;
- 5 (2) "Chairman" means the chairman of the West
6 Virginia shallow gas well review board provided for in
7 section four of this article;
- 8 (3) "Coal operator" means any person who proposes to
9 or does operate a coal mine;
- 10 (4) "Coal seam" and "workable coal bed" are
11 interchangeable terms and mean any seam of coal twenty
12 inches or more in thickness, unless a seam of less thickness
13 is being commercially worked, or can in the judgment of the
14 department foreseeably be commercially worked and will
15 require protection if wells are drilled through it;
- 16 (5) "Commission" means the oil and gas conservation
17 commission provided for in section four, article eight of this
18 chapter;
- 19 (6) "Commissioner" means the oil and gas conservation
20 commissioner provided for in section four, article eight of
21 this chapter;
- 22 (7) "Correlative rights" means the reasonable
23 opportunity of each person entitled thereto to recover and
24 receive without waste the gas in and under a tract or tracts,
25 or the equivalent thereof;
- 26 (8) "Deep well" means any well other than a shallow
27 well, drilled and completed in a formation at or below the
28 top of the uppermost member of the "Onondaga Group";
- 29 (9) "Department" means the state department of energy
30 provided for in chapter twenty-two of this code;
- 31 (10) "Director" means the director for the division of oil
32 and gas provided for in section eleven, article one, chapter
33 twenty-two of this code;

34 (11) "Drilling unit" means the acreage on which the
35 board decides one well may be drilled under section ten of
36 this article;

37 (12) "Gas" means all natural gas and all other fluid
38 hydrocarbons not defined as oil in subdivision (15) of this
39 section;

40 (13) "Gas operator" means any person who owns or has
41 the right to develop, operate and produce gas from a pool
42 and to appropriate the gas produced therefrom either for
43 himself or for himself and others. In the event that there is
44 no gas lease in existence with respect to the tract in
45 question, the person who owns or has the gas rights therein
46 shall be considered a "gas operator" to the extent of seven
47 eighths of the gas in that portion of the pool underlying the
48 tract owned by such person, and a "royalty owner" to the
49 extent of one eighth of such gas;

50 (14) "Just and equitable share of production" means, as
51 to each person, an amount of gas in the same proportion to
52 the total gas production from a well as that person's acreage
53 bears to the total acreage in the drilling unit;

54 (15) "Oil" means natural crude oil or petroleum and
55 other hydrocarbons, regardless of gravity, which are
56 produced at the well in liquid form by ordinary production
57 methods and which are not the result of condensation of gas
58 after it leaves the underground reservoir;

59 (16) "Owner" when used with reference to any coal
60 seam, shall include any person or persons who own, lease or
61 operate such coal seam;

62 (17) "Person" means any natural person, corporation,
63 firm, partnership, partnership association, venture,
64 receiver, trustee, executor, administrator, guardian,
65 fiduciary or other representative of any kind, and includes
66 any government or any political subdivision or any agency
67 thereof;

68 (18) "Plat" means a map, drawing or print showing the
69 location of one or more wells or a drilling unit;

70 (19) "Pool" means an underground accumulation of gas
71 in a single and separate natural reservoir (ordinarily a
72 porous sandstone or limestone). It is characterized by a
73 single natural-pressure system so that production of gas
74 from one part of the pool tends to or does affect the reservoir
75 pressure throughout its extent. A pool is bounded by

76 geologic barriers in all directions, such as geologic
77 structural conditions, impermeable strata, and water in the
78 formation, so that it is effectively separated from any other
79 pools which may be present in the same district or in the
80 same geologic structure;

81 (20) "Royalty owner" means any owner of gas in place,
82 or gas rights, to the extent that such owner is not a gas
83 operator as defined in subdivision (13) of this section;

84 (21) "Shallow well" means any gas well drilled and
85 completed in a formation above the top of the uppermost
86 member of the "Onondaga Group": *Provided*, That in
87 drilling a shallow well the well operator may penetrate into
88 the "Onondaga Group" to a reasonable depth, not in excess
89 of twenty feet, in order to allow for logging and completion
90 operations, but in no event may the "Onondaga Group"
91 formation be otherwise produced, perforated or stimulated
92 in any manner;

93 (22) "Tracts comprising a drilling unit" means that all
94 separately owned tracts or portions thereof which are
95 included within the boundary of a drilling unit;

96 (23) "Well" means any shaft or hole sunk, drilled, bored
97 or dug into the earth or into underground strata for the
98 extraction, injection or placement of any liquid or gas, or
99 any shaft or hole sunk or used in conjunction with such
100 extraction, injection or placement. The term "well" does
101 not include any shaft or hole sunk, drilled, bored or dug into
102 the earth for the sole purpose of core drilling or pumping or
103 extracting therefrom potable, fresh or usable water for
104 household, domestic, industrial, agricultural or public use;
105 and

106 (24) "Well operator" means any person who proposes to
107 or does locate, drill, operate or abandon any well.

§22-7-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of this article shall apply to all lands located
3 in this state, under which a coal seam as defined in section
4 two of this article and section one, article one, chapter
5 twenty-two-b of this code, is located, however owned,
6 including any lands owned or administered by any
7 government or any agency or subdivision thereof, over
8 which the state has jurisdiction under its police power. The

9 provisions of this article are in addition to and not in
10 derogation of or substitution for the provisions of this
11 chapter or chapter twenty-two-b of this code.

12 (b) This article shall not apply to or affect:

13 (1) Deep wells;

14 (2) Oil wells and enhanced oil recovery wells associated
15 with oil wells;

16 (3) Any shallow well permitted under article four of this
17 chapter prior to 12:01 a.m., the first day of August, one
18 thousand nine hundred seventy-eight, unless such well is,
19 after completion (whether such completion is prior or
20 subsequent to the ninth day of June, one thousand nine
21 hundred seventy-eight), deepened subsequent to the ninth
22 day of June, one thousand nine hundred seventy-eight,
23 through another coal seam to another formation above the
24 top of the uppermost member of the "Onondaga Group";

25 (4) Any shallow well as to which no objection is made
26 under section seventeen, article one, chapter twenty-two-b
27 of this code;

28 (5) Wells as defined in subdivision (4), section one,
29 article four, chapter twenty-two-b of this code; or

30 (6) Free gas rights.

31 (c) The provisions of this article affecting applications
32 for permits to drill shallow gas wells shall only apply to
33 such applications filed after 12:01 a.m. the first day of
34 August, one thousand nine hundred seventy-eight, and the
35 provisions of article four of former chapter twenty-two
36 affecting such applications which were in effect
37 immediately prior to the ninth day of June, one thousand
38 nine hundred seventy-eight, shall apply to all such
39 applications filed prior to 12:01 a.m., the first day of
40 August, one thousand nine hundred seventy-eight, with like
41 effect as if this article had not been enacted.

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-2. Definitions.

§22-8-3. Application of article; exclusions.

§22-8-2. Definitions.

1 (a) Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (1) "Commission" means the oil and gas conservation
4 commission, and "commissioner" means the oil and gas

5 conservation commissioner as provided for in section four
6 of this article;

7 (2) "Director" means the director for the division of oil
8 and gas provided for in section eleven, article one, chapter
9 twenty-two of this code;

10 (3) "Person" means any natural person, corporation,
11 partnership, receiver, trustee, executor, administrator,
12 guardian, fiduciary or other representative of any kind, and
13 includes any government or any political subdivision or any
14 agency thereof;

15 (4) "Operator" means any owner of the right to develop,
16 operate and produce oil and gas from a pool and to
17 appropriate the oil and gas produced therefrom, either for
18 himself or for himself and others; in the event that there is
19 no oil and gas lease in existence with respect to the tract in
20 question, the owner of the oil and gas rights therein shall be
21 considered as "operator" to the extent of seven eighths of
22 the oil and gas in that portion of the pool underlying the
23 tract owned by such owner, and as "royalty owner" as to
24 one-eighth interest in such oil and gas; and in the event the
25 oil is owned separately from the gas, the owner of the
26 substance being produced or sought to be produced from
27 the pool shall be considered as "operator" as to such pool;

28 (5) "Royalty owner" means any owner of oil and gas in
29 place, or oil and gas rights, to the extent that such owner is
30 not an operator as defined in subdivision (4) of this section;

31 (6) "Independent producer" means a person who is
32 actively engaged in the production of oil and gas in West
33 Virginia, but whose gross revenue from such production in
34 West Virginia does not exceed five hundred thousand
35 dollars per year;

36 (7) "Oil" means natural crude oil or petroleum and
37 other hydrocarbons, regardless of gravity, which are
38 produced at the well in liquid form by ordinary production
39 methods and which are not the result of condensation of gas
40 after it leaves the underground reservoir;

41 (8) "Gas" means all natural gas and all other fluid
42 hydrocarbons not defined as oil in subdivision (7) of this
43 section;

44 (9) "Pool" means an underground accumulation of
45 petroleum in a single and separate natural reservoir
46 (ordinarily a porous sandstone or limestone). It is

47 characterized by a single natural-pressure system so that
48 production of petroleum from one part of the pool affects
49 the reservoir pressure throughout its extent. A pool is
50 bounded by geologic barriers in all directions, such as
51 geologic structural conditions, impermeable strata, and
52 water in the formations, so that it is effectively separated
53 from any other pools that may be presented in the same
54 district or on the same geologic structure;

55 (10) "Well" means any shaft or hole sunk, drilled, bored
56 or dug into the earth or underground strata for the
57 extraction of oil or gas;

58 (11) "Shallow well" means any well drilled and
59 completed in a formation above the top of the uppermost
60 member of the "Onondaga Group": *Provided*, That in
61 drilling a shallow well the operator may penetrate into the
62 "Onondaga Group" to a reasonable depth, not in excess of
63 twenty feet, in order to allow for logging and completion
64 operations, but in no event may the "Onondaga Group"
65 formation be otherwise produced, perforated or stimulated
66 in any manner;

67 (12) "Deep well" means any well, other than a shallow
68 well, drilled and completed in a formation at or below the
69 top of the uppermost member of the "Onondaga Group";

70 (13) "Drilling unit" means the acreage on which one
71 well may be drilled;

72 (14) "Waste" means and includes: (a) Physical waste, as
73 that term is generally understood in the oil and gas
74 industry; (b) the locating, drilling, equipping, operating or
75 producing of any oil or gas well in a manner that causes, or
76 tends to cause, a reduction in the quantity of oil or gas
77 ultimately recovered from a pool under prudent and proper
78 operations, or that causes or tends to cause unnecessary or
79 excessive surface loss of oil or gas; or (c) the drilling of more
80 deep wells than are reasonably required to recover
81 efficiently and economically the maximum amount of oil
82 and gas from a pool;

83 (15) "Correlative rights" means the reasonable
84 opportunity of each person entitled thereto to recover and
85 receive without waste the oil and gas in and under his tract
86 or tracts, or the equivalent thereof; and

87 (16) "Just and equitable share of production" means, as
88 to each person, an amount of oil or gas or both substantially

89 equal to the amount of recoverable oil and gas in that part of
90 a pool underlying his tract or tracts.

91 (b) Unless the context clearly indicates otherwise, the use
92 of the word "and" and the word "or" shall be
93 interchangeable, as, for example, "oil and gas" shall mean
94 oil or gas or both.

§22-8-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of this article shall apply to all lands located
3 in this state, however owned, including any lands owned or
4 administered by any government or any agency or
5 subdivision thereof, over which the state has jurisdiction
6 under its police power. The provisions of this article are in
7 addition to and not in derogation of or substitution for the
8 provisions of article one, chapter twenty-two-b of this code.

9 (b) This article shall not apply to or affect:

10 (1) Shallow wells other than those utilized in secondary
11 recovery programs as set forth in section eight of this
12 article;

13 (2) Any well commenced or completed prior to the ninth
14 day of March, one thousand nine hundred seventy-two,
15 unless such well is, after completion (whether such
16 completion is prior or subsequent to that date), (i) deepened
17 subsequent to that date to a formation at or below the top of
18 the uppermost member of the "Onondaga Group" or (ii)
19 involved in secondary recovery operations for oil under an
20 order of the commissioner entered pursuant to section eight
21 of this article;

22 (3) Gas storage operations or any well employed to
23 inject gas into or withdraw gas from a gas storage reservoir
24 or any well employed for storage observation; or

25 (4) Free gas rights.

26 (c) The provisions of this article shall not be construed
27 to grant to the commissioner authority or power to:

28 (1) Limit production or output, or prorate production of
29 any oil or gas well, except as provided in subdivision (6),
30 subsection (a), section seven of this article; or

31 (2) Fix prices of oil or gas.

CHAPTER 22B. OIL AND GAS.

**ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS;
ADMINISTRATION; ENFORCEMENT.**

§22B-1-1. Definitions.

- 1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
- 3 (a) "Casing" means a string or strings of pipe commonly
4 placed in wells drilled for natural gas or petroleum or both;
- 5 (b) "Cement" means hydraulic cement properly mixed
6 with water;
- 7 (c) "Chairman" means the chairman of the West
8 Virginia shallow gas well review board as provided for in
9 section four, article seven, chapter twenty-two of this code;
- 10 (d) "Chief" means chief of the division of water
11 resources of the department of natural resources;
- 12 (e) "Coal operator" means any person or persons, firm,
13 partnership, partnership association or corporation that
14 proposes to or does operate a coal mine;
- 15 (f) "Coal seam" and "workable coal bed" are
16 interchangeable terms and mean any seam of coal twenty
17 inches or more in thickness, unless a seam of less thickness
18 is being commercially worked, or can in the judgment of the
19 department foreseeably be commercially worked and will
20 require protection if wells are drilled through it;
- 21 (g) "Commissioner" means commissioner of the
22 department of energy;
- 23 (h) "Deep well" means any well other than a shallow
24 well, drilled and completed in a formation at or below the
25 top of the uppermost member of the "Onondaga Group";
- 26 (i) "Division" means, for purposes of this article and
27 articles three and four of this chapter, the division of oil and
28 gas of the department of energy;
- 29 (j) "Director" means, for the purposes of this article and
30 articles two, three and four of this chapter, the director of
31 the division of oil and gas of the department of energy;
- 32 (k) "Expanding cement" means any cement approved
33 by the division of oil and gas which expands during the
34 hardening process, including, but not limited to, regular oil
35 field cements with the proper additives;
- 36 (l) "Facility" means any facility utilized in the oil and
37 gas industry in this state and specifically named or referred
38 to in this article or in article three or four of this chapter,
39 other than a well or well site;
- 40 (m) "Gas" means all natural gas and all other fluid

41 hydrocarbons not defined as oil in subdivision (n) of this
42 section;

43 (n) "Oil" means natural crude oil or petroleum and
44 other hydrocarbons, regardless of gravity, which are
45 produced at the well in liquid form by ordinary production
46 methods and which are not the result of condensation of gas
47 after it leaves the underground reservoirs;

48 (o) "Owners" when used with reference to any well,
49 shall include any person or persons, firm, partnership,
50 partnership association or corporation that owns, manages,
51 operates, controls or possesses such well as principal, or as
52 lessee or contractor, employee or agent of such principal;

53 (p) "Owner" when used with reference to any coal seam,
54 shall include any person or persons who own, lease or
55 operate such coal seam;

56 (q) "Person" means any natural person, corporation,
57 firm, partnership, partnership association, venture,
58 receiver, trustee, executor, administrator, guardian,
59 fiduciary or other representative of any kind, and includes
60 any government or any political subdivision or any agency
61 thereof;

62 (r) "Plat" means a map, drawing or print showing the
63 location of a well or wells as herein defined;

64 (s) "Review board" means the West Virginia shallow gas
65 well review board as provided for in section four, article
66 seven, chapter twenty-two of this code;

67 (t) "Safe mining through of a well" means the mining of
68 coal in a workable coal bed up to a well which penetrates
69 such workable coal bed and through such well so that the
70 casing or plug in the well bore where the well penetrates the
71 workable coal bed is severed;

72 (u) "Shallow well" means any gas well drilled and
73 completed in a formation above the top of the uppermost
74 member of the "Onondaga Group": *Provided*, That in
75 drilling a shallow well the operator may penetrate into the
76 "Onondaga Group" to a reasonable depth, not in excess of
77 twenty feet, in order to allow for logging and completion
78 operations, but in no event may the "Onondaga Group"
79 formation be otherwise produced, perforated or stimulated,
80 in any manner;

81 (v) "Stimulate" means any action taken by a well
82 operator to increase the inherent productivity of an oil or

83 gas well, including, but not limited to, fracturing, shooting
84 or acidizing, but excluding cleaning out, bailing or
85 workover operations;

86 (w) "Waste" means (i) physical waste, as the term is
87 generally understood in the oil and gas industry; (ii) the
88 locating, drilling, equipping, operating or producing of any
89 oil or gas well in a manner that causes, or tends to cause a
90 substantial reduction in the quantity of oil or gas ultimately
91 recoverable from a pool under prudent and proper
92 operations, or that causes or tends to cause a substantial or
93 unnecessary or excessive surface loss of oil or gas; or (iii) the
94 drilling of more deep wells than are reasonably required to
95 recover efficiently and economically the maximum amount
96 of oil and gas from a pool; (iv) substantially inefficient,
97 excessive or improper use, or the substantially unnecessary
98 dissipation of, reservoir energy, it being understood that
99 nothing in this chapter shall be construed to authorize any
100 agency of the state to impose mandatory spacing of shallow
101 wells except for provisions of section eight, article eight,
102 chapter twenty-two of this code and the provisions of
103 article seven, chapter twenty-two of this code; (v)
104 inefficient storing of oil or gas: *Provided*, That storage in
105 accordance with a certificate of public convenience issued
106 by the federal energy regulatory commission shall be
107 conclusively presumed to be efficient and (vi) other
108 underground or surface waste in the production or storage
109 of oil, gas or condensate, however caused;

110 (x) "Well" means any shaft or hole sunk, drilled, bored
111 or dug into the earth or into underground strata for the
112 extraction or injection or placement of any liquid or gas, or
113 any shaft or hole sunk or used in conjunction with such
114 extraction or injection or placement. The term "well" does
115 not include any shaft or hole sunk, drilled, bored or dug into
116 the earth for the sole purpose of core drilling or pumping or
117 extracting therefrom potable, fresh or usable water for
118 household, domestic, industrial, agricultural or public use;

119 (y) "Well work" means the drilling, re-drilling,
120 deepening, stimulating, pressuring by injection of any fluid,
121 converting from one type of well to another, combining or
122 physically changing to allow the migration of fluid from one
123 formation to another or plugging or replugging of any well;

124 (z) "Well operator" or "operator" means any person or

125 persons, firm, partnership, partnership association or
 126 corporation that proposes to or does locate, drill, operate or
 127 abandon any well as herein defined;
 128 (aa) "Pollutant" shall have the same meaning as
 129 provided in subsection (x), section two, article five-a,
 130 chapter twenty of this code; and
 131 (bb) "Waters of this state" shall have the same meaning
 132 as the term "waters" as provided in subsection (e), section
 133 two, article five-a, chapter twenty of this code.

CHAPTER 109

(Com. Sub. for H. B. 1529—By Mr. Speaker, Mr. Albright, and Delegate Swann,
 by request of the Executive)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-a, relating to leasing of mineral interests of unknown or missing owners and abandoning owners by order of a circuit court; appointment of a special commissioner to sell, execute and deliver mineral leases, and to execute and deliver deeds; notice to affected owners; terms and conditions of lease; investment and disbursements of lease proceeds; limitation of actions by affected mineral owners; and severability.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-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 twelve-a, to read as follows:

ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.

§55-12A-1. Legislative intent.

§55-12A-2. Definitions.

§55-12A-3. Jurisdiction of the circuit court.

§55-12A-4. When court may appoint special commissioner; persons autho-

- rized to institute proceedings.
- §55-12A-5. Persons to be joined as defendants; contents of verified petition; notice; guardian ad litem.
- §55-12A-6. Appointment of a special commissioner; sale of lease; special commissioner's report; when court not to authorize lease; investment of lease proceeds; search for owner; period during which unknown or missing owner or abandoning owner may establish identity and title.
- §55-12A-7. When special commissioner may convey title in mineral interest to surface owner; form of deed; payment to surface owner; final report of special commissioner.
- §55-12A-8. Petitioner's attorneys' fees, expenses and court costs.
- §55-12A-9. Limitation of action by unknown or missing owner or abandoning owner.
- §55-12A-10. Severability.

§55-12A-1. Legislative intent.

1 It is the intent of the Legislature, in empowering the
2 circuit courts of the state, as provided by this article,
3 to facilitate development of coal, oil, gas, and other
4 minerals, as part of the public policy of the state, by
5 removing certain barriers to such development caused
6 by interests in minerals owned by unknown or missing
7 owners or by abandoning owners.

§55-12A-2. Definitions.

1 As used in this article, the following definitions shall
2 apply:

3 (1) "Abandoning owner" means any person, vested
4 with title to any interest in minerals, who is proved to
5 have abandoned the interest, that is, to have relin-
6 quished any right to possess or enjoy the interest with
7 the expressed intention of terminating ownership of the
8 interest, but without vesting the ownership in any other
9 person.

10 (2) "Development of the minerals" or "mineral devel-
11 opment" means (a) mining coal by any method, or (b)
12 drilling for and producing oil or gas by conventional
13 techniques, or by enhanced recovery by injection of
14 fluids of any kind into the producing formation, or (c)

15 utilization of a gas-bearing formation as an under-
16 ground gas storage reservoir within the meaning of
17 article seven, chapter twenty-two of this code, or (d)
18 production of other minerals by any method.

19 (3) "Interest in minerals" means any interest, real or
20 personal, in coal, oil, gas or any other mineral, for which
21 interest the property taxes are not delinquent as of the
22 date of the filing of a petition under this article.

23 (4) "Surface owner" means any person vested with
24 any interest in fee in the surface estate overlying the
25 particular minerals sought to be developed under this
26 article. A surface owner's rights under this article shall
27 be subject to any deed of trust or other security
28 instrument, lien, surface lease, easement or other non-
29 possessory interest in the surface owned by any other
30 person; but such persons other than the surface owner
31 shall have no right to notice and no standing to appear
32 and be heard hereunder.

33 (5) "Unknown or missing owner" means any person,
34 vested with title to any interest in minerals, whose
35 present identity or location cannot be determined from
36 the records of the clerk of the county commission, the
37 sheriff, the assessor, and the clerk of the circuit court
38 in the county in which the interest is located or by
39 diligent inquiry in the vicinity of the owner's last known
40 place of residence, and shall include such owner's heirs,
41 successors and assigns not known to be alive.

§55-12A-3. Jurisdiction of the circuit court.

1 The circuit court of the county wherein the minerals
2 sought to be leased, or the major portion thereof, are
3 situated shall have jurisdiction of the proceedings
4 authorized by this article.

§55-12A-4. When court may appoint special commissioner; persons authorized to institute proceedings.

1 (a) If the title to any mineral interest is vested in an
2 unknown or missing owner or an abandoning owner and
3 it is proved that the development of the minerals would
4 be advantageous to a prudent owner, and if it appears

5 that the development of the minerals furthers the public
6 policy stated in section one of this article, the circuit
7 court of the county having jurisdiction under section
8 three of this article shall have the power to appoint a
9 special commissioner and authorize the special commis-
10 sioner to sell, execute and deliver a valid lease of the
11 mineral interest on terms and conditions customary in
12 the area for the mineral interest to be leased. The lease
13 shall continue in full force and effect so long as there
14 are operations under its terms unless the lease has
15 previously expired by its own terms.

16 (b) A petition to the circuit court for the appointment
17 of a special commissioner may be instituted by any
18 person who is:

19 (1) Vested with an interest in fee in the surface estate
20 overlying the particular minerals sought to be deve-
21 loped; or

22 (2) Vested with an interest in fee in the particular
23 minerals sought to be developed; or

24 (3) The lessee or the assignee or successor to the
25 lessee, under a valid and subsisting mineral lease, the
26 lessor of which is a person entitled to file a petition by
27 reason of subdivision (2) of this subsection.

**§55-12A-5. Persons to be joined as defendants; contents of
verified petition; notice; guardian ad litem.**

1 (a) The person filing a petition under this article shall
2 join as defendants to the action all unknown or missing
3 owners or abandoning owners having record title to the
4 particular minerals sought to be developed, and the
5 unknown heirs, successors and assigns of all such
6 owners not known to be alive. All persons not in being
7 who might have some contingent or future interest
8 therein, and all persons whether in being or not in
9 being, having any interest, present, future or contingent,
10 in the mineral interests sought to be leased, shall be
11 fully bound by the proceedings hereunder.

12 (b) The petition shall be verified. It shall contain
13 allegations of the facts showing (1) the entitlement of the
14 petitioner to file the petition, (2) an identification of the

15 defendants and the mineral interest of each as far as
16 practical under the circumstances, (3) a description of
17 the tract of land which is the subject of the petition, (4)
18 the interest in the particular minerals sought to be
19 developed, (5) the nature of the proposed development
20 of the minerals, (6) the efforts to locate unknown or
21 missing owners, if any, (7) the relinquishment by
22 abandoning owners, if any, of any right to possess or
23 enjoy their interest with the expressed intention of
24 terminating ownership of the interest, but without
25 vesting the ownership in any other person, (8) such other
26 information known to the petitioner which might be
27 helpful in identifying or locating the present owners
28 thereof, and, as exhibits to the petition, (9) a certified
29 copy of the most recent recorded instrument embracing
30 the interest to be leased, (10) such additional instru-
31 ments as are necessary to show the vesting of title to the
32 minerals in the last record owner thereof, and (11) a
33 certified copy of any competing lease or easement of
34 record, that is to say, a lease or easement from
35 landowners who are not defendants, embracing all or
36 part of the tract of land which is the subject of the
37 petition, for any mineral development by the lessee or
38 easement owner of record of the minerals sought by the
39 petition; and the petition may contain allegations of the
40 facts showing that (12) mineral development would be
41 advantageous to the defendants and would further the
42 public policy stated in section one of this article; and the
43 prayer shall be for the court to order the sale of a lease
44 covering the subject mineral interest under section six
45 of this article, and thereafter, in the case of any
46 defendant or heir, successor or assign of any defendant
47 who does not appear to claim ownership of the defend-
48 ant's interest for seven years after the date of the lease,
49 for the court to order a conveyance of the defendant's
50 mineral interest under section seven of this article,
51 subject to the lease, to the owner of the surface overlying
52 the mineral interest.

53 (c) If personal service of process is possible, it shall
54 be made as provided by the West Virginia rules of civil
55 procedure. In addition, immediately upon the filing of
56 the petition, the petitioner shall (1) publish a Class III

57 legal advertisement in compliance with the provisions of
58 article three, chapter fifty-nine of this code, and (2) no
59 later than the first day of publication, file a lis pendens
60 notice in the county clerk's office of the county wherein
61 the mineral estate or the larger portion thereof lies.
62 Both the advertisement and the lis pendens notice shall
63 set forth (1) the names of the petitioner and the
64 defendants, as they are known to be by the exercise of
65 reasonable diligence by the petitioner, and their last
66 known addresses, (2) the date and record data of the
67 instrument or other conveyance which immediately
68 created the mineral interest, (3) an adequate description
69 of the land as contained therein, (4) the source of title
70 of the last known owners of the mineral interests, and
71 (5) a statement that the action is brought for the purpose
72 of authorizing the execution and delivery of a valid and
73 present mineral lease for development of the particular
74 minerals described in the petition, and thereafter, in the
75 case of any defendant or heir, successor or assign of any
76 defendant who does not appear to claim ownership of the
77 defendant's interest within seven years after the date of
78 the lease, for the court to order a conveyance of the
79 defendant's mineral interest under section seven of this
80 article, subject to the lease, to the owner of the surface
81 overlying the mineral interest. In addition, the peti-
82 tioner shall send notice by certified mail, return receipt
83 requested, to the last known address, if there be such,
84 of all named defendants. In addition, the court may in
85 its discretion order advertisement elsewhere or by
86 additional means if there is reason to believe that
87 additional advertisement might result in identifying and
88 locating the unknown or missing owners.

89 (d) The circuit court shall appoint a guardian ad litem
90 for any unknown or missing owner or abandoning owner
91 and their unknown heirs, successors and assigns not
92 known to be alive. The compensation and expenses of the
93 guardian ad litem shall be fixed by the court and paid
94 by the petitioner under terms ordered by the court.

**§55-12A-6. Appointment of a special commissioner; sale
of lease; special commissioner's report;
when court not to authorize lease; invest-**

ment of lease proceeds; search for owner; period during which unknown or missing owner or abandoning owner may establish identity and title.

1 (a) If upon presentation to the court of the petition,
2 and the failure of the named defendants or their heirs,
3 successors and assigns to answer the petition and deny
4 material allegations in the complaint within the time to
5 answer under the West Virginia rules of civil procedure,
6 the court may accept the allegations of the verified
7 petition, excluding allegations made upon information
8 and belief, as prima facie proof of the facts alleged; and
9 if it further appears to the court that (1) the petitioner
10 has met the requirements for a lease under this article,
11 including the evidentiary requirements of section five-
12 b and the notice requirements of section five-c, (2) a
13 diligent effort has been made to identify and locate the
14 present unknown or missing owners and abandoning
15 owners, and (3) the mineral development sought in the
16 petition would be advantageous to the defendants and
17 would further the public policy stated in section one of
18 this article, the court shall appoint a special commis-
19 sioner therefor and authorize the special commissioner
20 to sell, execute and deliver a valid lease covering the
21 mineral interests in and underlying the lands for the
22 particular mineral development sought in the petition:
23 *Provided*, That no order authorizing the special
24 commissioner to sell, execute or deliver a lease of said
25 mineral interest, shall be entered sooner than six
26 months following filing of the petition, and the court
27 may in its discretion direct the petitioner to make
28 further efforts to locate the missing or unknown owners
29 or abandoning owners.

30 (b) Should the court appoint a special commissioner
31 pursuant to subsection (a) of this section, the order of
32 the court shall also (1) require the special commissioner
33 to give a bond in favor of the owners of the mineral
34 interest which is to be leased in a specified amount, (2)
35 provide for all of the rental, royalty, and other provi-
36 sions of the lease which the special commissioner is
37 authorized to make, except for the initial monetary

38 consideration for the sale of the lease, (3) specify
39 whether the special commissioner's sale of the lease shall
40 be public or private, (4) if the order provides for a public
41 sale, determine the notice to be given, and (5) direct that
42 the special commissioner be paid compensation and
43 expenses, including the bond expense, as provided in
44 section eight of this article in an amount agreed upon
45 by the special commissioner and the petitioner; but if
46 no agreement is made within thirty days after the
47 special commissioner is appointed, then the court shall
48 fix the compensation and expenses. The sale shall be for
49 a monetary consideration payable on confirmation of
50 sale. No appraisal shall be required.

51 (c) The special commissioner shall proceed in com-
52 pliance with the provisions of the order to sell the lease
53 authorized thereby; and if two or more persons offer to
54 purchase the lease, the sale shall be made to the offeror
55 whose offer is deemed most beneficial to the unknown
56 or missing owner or abandoning owner, and most
57 consistent with the public policy stated in section one of
58 this article. After making the sale, the special commis-
59 sioner shall make a report thereof to the court. Upon
60 filing the report, the court may hear evidence as to
61 whether or not the sale price and the provisions of the
62 lease are reasonable; and if the court is satisfied with
63 the sale price and the provisions of the lease, the sale
64 of the lease shall be confirmed by the court, whereupon
65 the lease shall be executed, acknowledged and delivered
66 by the special commissioner.

67 (d) The court shall not authorize a special commis-
68 sioner's lease of the mineral interest of any owner whose
69 identity and whereabouts is known, or can be ascer-
70 tained by diligent inquiry, or is discovered as a result
71 of the action brought hereunder, unless such owner is
72 proved to be an abandoning owner who fails to answer
73 the subject petition, notice having been given as
74 provided in section five of this article.

75 (e) Any person purporting to be the unknown or
76 missing owner or an abandoning owner, or any heir,
77 successor or assign of an unknown or missing owner or
78 abandoning owner, may appear as a matter of right at

79 any time prior to the entry of judgment confirming the
80 special commissioner's lease, for the purpose of estab-
81 lishing his title to a mineral interest. If the appearing
82 owner's claim is established to the satisfaction of the
83 court, the court shall dismiss the action as to the
84 appearing owner's interest at plaintiff's cost.

85 (f) The lessee shall promptly deliver the sale consid-
86 eration and subsequent proceeds, if any, from the lease
87 to the special receiver of the court, who shall hold and
88 invest the same for the use and benefit of the unknown
89 or missing owners or abandoning owners. The court,
90 upon its own motion or upon motion of the special
91 receiver, may at any time authorize the special receiver
92 to expend an amount not to exceed ten percent of the
93 funds collected by the special receiver for the purpose
94 of instituting a search for the unknown or missing
95 owners.

96 (g) Within seven years after the date of the special
97 commissioner's lease, any unknown or missing owner or
98 abandoning owner of a mineral interest leased he-
99 reunder may file a motion with the court to re-open the
100 action, and may thereupon present such proof as the
101 court may deem necessary to establish the movant's
102 identity and title to the mineral interest or any part
103 thereof. If the court finds that the identity and interest
104 of the movant has been established, and that the movant
105 has manifested a desire to obtain the benefits of the
106 proceeds resulting from the lease, the court shall enter
107 an order (1) documenting the movant's title, (2) assign-
108 ing all future attributable proceeds to the movant and
109 (3) directing the special receiver to pay over the funds
110 then held attributable to the movant's interests. The
111 circuit clerk of the court shall file and record a certified
112 copy of the order with the clerk of the county commis-
113 sion of each county wherein such land is; and from the
114 time of recordation, the movant shall be deemed the
115 owner of the mineral interest specified in the order.

**§55-12A-7. When special commissioner may convey title
in mineral interest to surface owner; form
of deed; payment to surface owner; final
report of special commissioner.**

1 (a) (1) If an owner of any mineral interest leased
2 under section six of this article remains unknown or
3 missing, or does not disavow the abandonment, for a
4 period of seven years from the date of the special
5 commissioner's lease, the special receiver shall report
6 the same to the court, whereupon the court shall enter
7 an order naming those who then appear to be surface
8 owners as additional parties and giving notice to them,
9 pursuant to the West Virginia rules of civil procedure,
10 of an opportunity to appear and present proof of
11 ownership in fee of the surface estate. Upon a finding
12 by the court of the present ownership in fee of the
13 surface estate, the court shall (i) order the special
14 commissioner to convey to the proven surface owner,
15 subject to the special commissioner's lease, the mineral
16 interest specified in the motion, by a deed substantially
17 in the form specified in subsection (b) of this section and
18 (ii) order the special receiver to pay to the surface owner
19 the funds which have accrued to the credit of the
20 mineral interests specified in the motion to the date of
21 his report after payment of all allowable fees, expenses
22 and court costs, including special commissioner's fees
23 paid or to be paid in amounts determined by the court.
24 After the date of the special commissioner's deed, the
25 surface owner grantee shall be entitled to receive all
26 proceeds under the lease attributable to the mineral
27 interests specified in the deed.

28 (2) If the boundaries of the mineral tract subject to
29 the special commissioner's lease encompass two or more
30 surface tracts, a separate deed shall be made for the
31 mineral interest underlying each surface tract. If a
32 surface tract is owned by more than one person, the deed
33 respecting that surface tract shall convey the mineral
34 interest according to the surface estate and interest of
35 each surface owner.

36 (b) The special commissioner's deed may be made in
37 the following form, or to the same effect:

38 This deed, made the _____ day of
39 _____, 19____, between
40 _____, special commissioner, grantor,
41 and _____, grantee,

42 Witnesseth, that whereas, grantor, in pursuance of the
 43 authority vested in him by an order of the circuit court
 44 of _____ county, West Virginia, entered on
 45 the _____ day of _____, 19____, in civil
 46 action no. _____ therein pending, to convey the
 47 mineral interest more particularly described below to
 48 the grantee,

49 Now, therefore, this deed witnesseth: That grantor
 50 grants unto grantee, subject to the special commission-
 51 er's lease mentioned below, and further subject to all
 52 other liens and encumbrances of record, that certain
 53 mineral interest in _____ county, West
 54 Virginia, more particularly described in the cited order
 55 of the circuit court as follows: (here insert the descrip-
 56 tion in the order); and being (here specify "all" or "a
 57 portion") of the mineral interest described in that
 58 certain special commissioner's lease dated
 59 _____, 19____, of record in the office of the
 60 clerk of _____ county, in _____book
 61 _____, at page_____

62 Witness the following signature.

63
 64

 Special Commissioner

65 (c) Upon the delivery of the deed or deeds and the
 66 payment or payments as directed in subsection (a) of this
 67 section, the special commissioner shall make a final
 68 report to the court; and upon approval thereof, the court
 69 shall order the discharge of the special commissioner's
 70 bond.

71 (d) Prior to the delivery of the special commissioner's
 72 deed, no deed from a surface owner to another shall
 73 sever ownership of the surface as such from ownership
 74 of any benefits under this article. Any deed purporting
 75 to create such a severance shall be void.

§55-12A-8. Petitioner's attorneys' fees, expenses and court costs.

1 All of the petitioner's attorneys' fees, expenses and
 2 court costs incident to the original proceedings autho-
 3 rized under this article shall be paid by the lessee, if

4 a lease is executed pursuant hereto, and by the peti-
5 tioner if for any reason no lease is executed. After the
6 date of the special commissioner's lease, all expenses and
7 court costs shall be paid out of funds in the hands of the
8 special receiver to the extent such funds are available.

**§55-12A-9. Limitation of action by unknown or missing
owner or abandoning owner.**

1 After the expiration of seven years from the date of
2 the special commissioner's lease, no action may be
3 brought by any unknown or missing owner or abandon-
4 ing owner or any heir, successor or assign thereof either
5 to recover any past or future proceeds accrued or to be
6 accrued from the lease herein authorized, or to recover
7 any right, title or interest in and to the mineral interest
8 subject to the lease.

§55-12A-10. Severability.

1 If any part of this article is adjudged to be unconsti-
2 tutional or invalid, such invalidation shall not affect the
3 validity of the remaining parts of this article; and to this
4 end, the provisions of this article are hereby declared
5 to be severable.

CHAPTER 110

(Com. Sub. for H. B. 1419—By Delegate Yanni and Delegate Burke)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to motor vehicles not manufactured in accordance with federal laws and regulations; requirements which must be met in order to obtain a title or registration; exceptions; commissioner of department of motor vehicles required to conduct limited inspections; issuance of certificate of inspection; fees for application for inspection; requiring purchaser to be given written disclosure of all modifications; and

documents required to be submitted with an application for title.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. VEHICLE COMPLIANCE WITH FEDERAL CLEAN AIR STANDARDS AND VEHICLE SAFETY.

§17A-3A-1. Compliance with federal standards and vehicle safety.

§17A-3A-2. Consumer disclosure.

§17A-3A-3. Certificates of title.

§17A-3A-1. Compliance with federal standards and vehicle safety.

1 (a) Before a vehicle not manufactured in accordance
2 with the laws and regulations of the United States
3 Motor Vehicle Safety Act or the United States Clean Air
4 Act may be titled and registered in this state, the
5 following requirements must be met: (1) The dealer or
6 owner of a vehicle sought to be titled and registered
7 must have obtained copies of the bond release letters
8 required by federal law from the United States Envir-
9 onmental Protection Agency and the United States
10 Department of Transportation. Copies of these bond
11 release letters must be displayed to any prospective
12 purchaser whenever the vehicle is offered for sale:
13 *Provided,* That sections one and two of this article do
14 not apply to antique vehicles or to vehicles especially
15 designed for racing purposes. A vehicle subject to the
16 requirements of this subsection may not be titled as a
17 new motor vehicle. (2) The dealer or owner of a vehicle,
18 upon initial application for a title and registration in
19 this state must submit a receipt or other documentation
20 from the United States Department of the Treasury
21 showing that any and all gas guzzler tax payable on the
22 vehicle under Section 4064 of Title 26, U.S. Code, has
23 been paid by the vehicle importer: *Provided,* That such
24 receipt or documentation is not necessary for those
25 vehicles not subject to the gas guzzler tax.

26 (b) The commissioner shall conduct limited inspec-
27 tions of all such vehicles described above, in accordance
28 with the following:

29 (1) On the occasion of the initial application for a title
30 and registration or as part of any presale inspection
31 mandated by state law, the vehicle shall be inspected for
32 compliance with federal safety standards or conditions
33 which render the vehicle unsafe or hazardous during
34 normal use. This inspection is in addition to the
35 standard vehicle inspection and may not be construed
36 as state approval of the modifications performed to
37 bring the vehicle into compliance with federal standards
38 or as a state certification that the vehicle is free of
39 hazardous conditions. The state will issue a certificate
40 of inspection and approval if the vehicle appears to
41 comply with all federal safety standards. This certificate
42 must be submitted as part of the initial application for
43 a title and registration in this state. Denial of such a
44 certificate is without prejudice to reapplication after the
45 detected noncompliance or unsafe or hazardous condi-
46 tion has been corrected; and

47 (2) For each vehicle, each time review is sought, the
48 applicant must submit a fee in an amount determined
49 by the commissioner to be sufficient to cover the costs
50 of the presale inspection mandated by this section.

51 (c) The provisions of this section apply to the initial
52 sale or registration of a vehicle within this state, without
53 regard to whether it has previously been sold or
54 registered in another state.

§17A-3A-2. Consumer disclosure.

1 Before a motor vehicle not manufactured in accor-
2 dance with the laws and regulations of the United States
3 Clean Air Act and the United States Motor Vehicle
4 Safety Act can be sold to a consumer in this state, the
5 seller must provide the purchaser with full written
6 disclosure of all modifications performed to the vehicle.
7 This disclosure consists of a description phrased in terms
8 reasonably understandable to a consumer with no
9 specialized technical training, accompanied by a copy of
10 the technical submissions made to the environmental

11 protection agency and department of transportation in
12 order to obtain certification of compliance. Failure to
13 make this disclosure renders the sale voidable.

§17A-3A-3. Certificates of title.

1 (a) Before any imported vehicle which has not pre-
2 viously been titled or registered in the United States
3 may be titled in this state, the applicant must submit:
4 (1) A manufacturer's certificate of origin issued by the
5 actual vehicle manufacturer together with a notarized
6 translation thereof, or (2) the documents constituting
7 valid proof of ownership in the country in which the
8 vehicle was originally purchased, together with a
9 notarized translation of any such document or (3) with
10 regard to vehicles imported from countries which cancel
11 the vehicle registration and title for export, the
12 documents assigned to such vehicle after the registra-
13 tion and title have been canceled, together with a
14 notarized translation thereof.

15 (b) In the event that the documents submitted as
16 required by subsection (a) do not name as owner the
17 current applicant for a certificate of title, the applicant
18 must also submit reliable proof of a chain of title.

19 The commissioner shall have the authority to issue a
20 temporary title for vehicles subject to the provisions of
21 this section. Application for a temporary title shall
22 include an affidavit from a U. S. Department of
23 Transportation approved modification facility, stating
24 that the standards required by the U.S. Department of
25 Transportation and the U.S. Environmental Protection
26 Agency have been met; and further an affidavit from
27 the vehicle owner stating that all necessary paperwork
28 has been forwarded to the applicable federal agencies
29 for consideration of a bond release letter. Temporary
30 titles shall not be transferable and shall be valid for a
31 period of time not to exceed ten months.

32 The fee for the temporary title shall be twenty-five
33 dollars. Applicable privilege taxes, as provided for in
34 this or other sections of the code, shall be collected from
35 the owner upon application for the temporary title, and
36 additional privilege taxes shall not be required upon

37 application for permanent titles issued following the
38 issuance of said temporary titles. Receipt of a federal
39 bond release letter shall be required to be filed with the
40 commissioner prior to issuance of a permanent title.

CHAPTER 111

(Com. Sub. for H. B. 1803—By Delegate Fullen)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing of new and used motor vehicle dealers; and who must obtain a license.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.**

§17A-6-1. Definitions.

1 (a) Unless the context in which used clearly requires
2 a different meaning, as used in this article:

3 (1) "New motor vehicle dealer" means every person
4 (other than his agents and employees, if any, while
5 acting within the scope of their authority or employ-
6 ment), engaged in, or who holds himself out to the public
7 to be engaged in, the business in this state of selling five
8 or more new motor vehicles or new and used motor
9 vehicles in any fiscal year of a type required to be
10 registered under the provisions of this chapter, except,
11 for the purposes of this article only, motorcycles.

12 (2) "Used motor vehicle dealer" means every person
13 (other than his agents and employees, if any, while
14 acting within the scope of their authority or employ-

15 ment), engaged in, or holds himself out to the public to
16 be engaged in, the business in this state of selling five
17 or more used motor vehicles in any fiscal year of a type
18 required to be registered under the provisions of this
19 chapter, except, for the purposes of this article only,
20 motorcycles.

21 (3) "House trailer dealer" means every person (other
22 than his agents and employees, if any, while acting
23 within the scope of their authority or employment),
24 engaged in, or who holds himself out to the public to be
25 engaged in, the business in this state of selling new
26 and/or used house trailers, or new and/or used house
27 trailers and trailers.

28 (4) "Trailer dealer" means every person (other than
29 his agents and employees, if any, while acting within the
30 scope of their authority or employment), engaged in, or
31 who holds himself out to the public to be engaged in,
32 the business in this state of selling new and/or used
33 trailers.

34 (5) "Motorcycle dealer" means every person (other
35 than his agents and employees, if any, while acting
36 within the scope of their authority or employment),
37 engaged in, or who holds himself out to the public to be
38 engaged in, the business in this state of selling new
39 and/or used motorcycles.

40 (6) "Used parts dealer" means every person (other
41 than his agents and employees, if any, while acting
42 within the scope of their authority or employment),
43 engaged in, or who holds himself out to the public to be
44 engaged in, the business in this state of selling any used
45 appliance, accessory, member, portion or other part of
46 any vehicle.

47 (7) "Wrecker or dismantler" means every person
48 (other than his agents and employees, if any, while
49 acting within the scope of their authority or employ-
50 ment), engaged in, or who holds himself out to the public
51 to be engaged in, the business in this state of dealing
52 in wrecked or damaged motor vehicles or motor vehicle
53 parts for the purpose of selling the parts thereof or scrap
54 therefrom.

55 (8) "New motor vehicles" means all motor vehicles,
56 except motorcycles and used motor vehicles, of a type
57 required to be registered under the provisions of this
58 chapter.

59 (9) "Used motor vehicles" means all motor vehicles,
60 except motorcycles, of a type required to be registered
61 under the provisions of this chapter which have been
62 sold and operated, or which have been registered or
63 titled, in this or any other state or jurisdiction.

64 (10) "House trailers" means all trailers designed or
65 intended for human occupancy and commonly referred
66 to as mobile homes or house trailers, but shall not
67 include camping, vacation and travel trailers.

68 (11) "Trailers" means all types of trailers other than
69 house trailers, and shall include, but not be limited to,
70 pole trailers and semitrailers.

71 (12) "Sales instrument" means any document result-
72 ing from the sale of a vehicle, which shall include, but
73 not be limited to, a bill of sale, invoice, conditional sales
74 contract, chattel mortgage, chattel trust deed, security
75 agreement or similar document.

76 (13) "Sell," "sale" or "selling" shall, in addition to the
77 ordinary definitions of such terms, include offering for
78 sale, soliciting sales of, negotiating for the sale of,
79 displaying for sale, or advertising for sale, any vehicle,
80 whether at retail, wholesale or at auction. "Selling"
81 shall, in addition to the ordinary definition of that term,
82 also include buying and exchanging.

83 (14) "Applicant" means any person making applica-
84 tion for an original or renewal license certificate under
85 the provisions of this article.

86 (15) "Licensee" means any person holding any license
87 certificate issued under the provisions of this article.

88 (16) "Predecessor" means the former owner or owners
89 or operator or operators of any new motor vehicle dealer
90 business or used motor vehicle dealer business.

91 (17) "Established place of business" shall, in the case
92 of a new motor vehicle dealer, mean a permanent

93 location, not a temporary stand or other temporary
94 quarters, owned or leased by the licensee or applicant
95 and actually occupied or to be occupied by him, as the
96 case may be, which is or is to be used exclusively for
97 the purpose of selling new motor vehicles or new and
98 used motor vehicles, which shall have space under roof
99 for the display of at least one new motor vehicle and
100 facilities and space therewith for the servicing and
101 repair of at least one motor vehicle, which servicing and
102 repair facilities and space shall be adequate and suitable
103 to carry out servicing and to make repairs necessary to
104 keep and carry out all representations, warranties and
105 agreements made or to be made by such dealer with
106 respect to motor vehicles sold by him, which shall be
107 easily accessible to the public, which shall conform to
108 all applicable laws of the state of West Virginia and the
109 ordinances of the municipality in which it is located, if
110 any, which shall display thereon at least one permanent
111 sign, clearly visible from the principal public street or
112 highway nearest said location and clearly stating the
113 business which is or shall be conducted thereat, and
114 which shall have adequate facilities to keep, maintain
115 and preserve records, papers and documents necessary
116 to carry on such business and to make the same
117 available to inspection by the commissioner at all
118 reasonable times: *Provided, however,* That the require-
119 ment of exclusive use shall be met even though (i) some
120 new and any used motor vehicles sold or to be sold by
121 such dealer or sold or are to be sold at a different
122 location or locations not meeting the definition of an
123 established place of business of a new motor vehicle
124 dealer, if each such location is or is to be served by other
125 facilities and space of such dealer for the servicing and
126 repair of at least one motor vehicle, adequate and
127 suitable as aforesaid, and each such location used for the
128 sale of some new and any used motor vehicles otherwise
129 meets the definition of an established place of business
130 of a used motor vehicle dealer; (ii) house trailers, trailers
131 and/or motorcycles are sold or are to be sold thereat, if,
132 subject to the provisions of section five of this article,
133 a separate license certificate is obtained for each such
134 type of vehicle business, which license certificate

135 remains unexpired, unsuspended and unrevoked; (iii)
136 farm machinery is sold thereat; and (iv) accessory,
137 gasoline and oil, or storage departments are maintained
138 thereat, if such departments are operated for the
139 purpose of furthering and assisting in the licensed
140 business or businesses.

141 (18) "Farm machinery" means all machines and tools
142 used in the production, harvesting or care of farm
143 products.

144 (19) "Established place of business" shall, in the case
145 of a used motor vehicle dealer, mean a permanent
146 location, not a temporary stand or other temporary
147 quarters, owned or leased by the licensee or applicant
148 and actually occupied or to be occupied by him, as the
149 case may be, which is or is to be used exclusively for
150 the purpose of selling used motor vehicles, which shall
151 have facilities and space therewith for the servicing and
152 repair of at least one motor vehicle, which servicing and
153 repair facilities and space shall be adequate and suitable
154 to carry out servicing and to make repairs necessary to
155 keep and carry out all representations, warranties and
156 agreements made or to be made by such dealer with
157 respect to used motor vehicles sold by him, which shall
158 be easily accessible to the public, shall conform to all
159 applicable laws of the state of West Virginia, and the
160 ordinances of the municipality in which it is located, if
161 any, which shall display thereon at least one permanent
162 sign, clearly visible from the principal public street or
163 highway nearest said location and clearly stating the
164 business which is or shall be conducted thereat, and
165 which shall have adequate facilities to keep, maintain
166 and preserve records, papers and documents necessary
167 to carry on such business and to make the same
168 available to inspection by the commissioner at all
169 reasonable times: *Provided*, That if a used motor vehicle
170 dealer has entered into a written agreement or agree-
171 ments with a person or persons owning or operating a
172 servicing and repair facility or facilities adequate and
173 suitable as aforesaid, the effect of which agreement or
174 agreements is to provide such servicing and repair
175 services and space in like manner as if said servicing

176 and repair facilities and space were located in or on said
177 dealer's place of business, then, so long as such an
178 agreement or agreements are in effect, it shall not be
179 necessary for such dealer to maintain such servicing and
180 repair facilities and space at his place of business in
181 order for such place of business to be an established
182 place of business as herein defined: *Provided further,*
183 That the requirement of exclusive use shall be met even
184 though (i) house trailers, trailers and/or motorcycles are
185 sold or are to be sold thereat, if, subject to the provisions
186 of section five of this article, a separate license
187 certificate is obtained for each such type of vehicle
188 business, which license certificate remains unexpired,
189 unsuspended and unrevoked; (ii) farm machinery is sold
190 thereat; and (iii) accessory, gasoline and oil, or storage
191 departments are maintained thereat, if such depart-
192 ments are operated for the purpose of furthering and
193 assisting in the licensed business or businesses.

194 (20) "Established place of business" shall, in the case
195 of a house trailer dealer, trailer dealer, motorcycle
196 dealer, used parts dealer and wrecker or dismantler,
197 mean a permanent location, not a temporary stand or
198 other temporary quarters, owned or leased by the
199 licensee or applicant and actually occupied or to be
200 occupied by him, as the case may be, which shall be
201 easily accessible to the public, which shall conform to
202 all applicable laws of the state of West Virginia and the
203 ordinances of the municipality in which it is located, if
204 any, which shall display thereon at least one permanent
205 sign, clearly visible from the principal public street or
206 highway nearest said location and clearly stating the
207 business which is or shall be conducted thereat, and
208 which shall have adequate facilities to keep, maintain
209 and preserve records, papers and documents necessary
210 to carry on such business and to make the same
211 available to inspection by the commissioner at all
212 reasonable times.

213 (21) "Manufacturer" means every person engaged in
214 the business of reconstructing, assembling or reassem-
215 bling vehicles with a special type body required by the
216 purchaser if said vehicle is subject to the title and

217 registration provision of the code.

218 (22) "Transporter" means every person engaged in the
219 business of transporting vehicles to or from a manufac-
220 turing, assembling or distributing plant to dealers, or
221 sales agents of a manufacturer, or purchasers.

222 (b) Under no circumstances whatever shall the terms
223 "new motor vehicle dealer," "used motor vehicle dealer,"
224 "house trailer dealer," "trailer dealer," "motorcycle
225 dealer," "used parts dealer" or "wrecker or dismantler"
226 be construed or applied under this article in such a way
227 as to include a banking institution, insurance company,
228 finance company, or other lending or financial institu-
229 tion, or other person, the state or any agency or political
230 subdivision thereof, or any municipality, who or which
231 owns or shall come in possession or ownership of, or
232 acquire contract rights, or security interests in or to, any
233 vehicle or vehicles or any part thereof and shall sell such
234 vehicle or vehicles or any part thereof for purposes other
235 than engaging in and holding himself or itself out to the
236 public to be engaged in the business of selling vehicles
237 or any part thereof.

238 (c) It is recognized that throughout this code the term
239 "trailer" or "trailers" is used to include, among other
240 types of trailers, house trailers. It is also recognized that
241 throughout this code the term "trailer" or "trailers" is
242 seldom used to include semitrailers or pole trailers.
243 However, for the purposes of this article only, the term
244 "trailers" shall have the meaning ascribed to it in
245 subsection (a) of this section.

CHAPTER 112

(Com. Sub. for H. B. 1142—By Delegate Mullett and Delegate Murphy)

[Passed February 24, 1986; in effect July 1, 1986. Approved by the Governor.]

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

to criminal penalties for failure to stop at a school bus which is stopped for the purpose of receiving or discharging school children.

Be it enacted by the Legislature of West Virginia:

That section seven, article twelve, 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 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways.

1 (a) The driver of a vehicle on any street or highway
2 upon meeting or overtaking from either direction any
3 school bus which has stopped on the highway for the
4 purpose of receiving or discharging any school children
5 shall stop the vehicle before reaching such school bus
6 when there is in operation on said school bus flashing
7 warning signal lights, as referred to in section eight of
8 this article, and said driver shall not proceed until such
9 school bus resumes motion, or is signaled by the school
10 bus driver to proceed or the visual signals are no longer
11 actuated. Any such driver acting in violation of this
12 subsection is guilty of a misdemeanor, and, upon
13 conviction thereof, shall be fined not less than twenty-
14 five nor more than two hundred dollars, or imprisoned
15 in the county jail not more than six months, or both
16 fined and imprisoned.

17 (b) Every bus used for the transportation of school
18 children shall bear upon the front and rear thereof a
19 plainly visible sign containing the words "school bus" in
20 letters not less than eight inches in height. When a
21 contract school bus is being operated upon a highway
22 for purposes other than the actual transportation of
23 children either to or from school all markings thereon
24 indicating "school bus" shall be covered or concealed.
25 Any school bus sold or transferred to another owner by
26 a county board of education, agency or individual, shall

27 have all flashing warning lights removed; all lettering
28 removed or permanently obscured; and such bus shall
29 be painted a color other than chrome yellow before sale
30 or transfer is made except when sold or transferred for
31 the transportation of school children.

32 (c) The driver of a vehicle upon a highway with
33 separate roadways need not stop upon meeting or
34 passing a school bus which is on a different roadway or
35 when upon a controlled-access highway and the school
36 bus is stopped in a loading zone which is a part of or
37 adjacent to such highway and where pedestrians are not
38 permitted to cross the roadway.

CHAPTER 113

(Com. Sub. for S. B. 85—By Senator Kaufman)

[Passed March 5, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance of a special registration plate or mobile windshield placard to physically handicapped persons with limited mobility, relatives of handicapped persons with limited mobility, persons who regularly reside with a physically handicapped person with limited mobility and persons who regularly transport a physically handicapped person with limited mobility; and issuance of a vehicle decal to a physically disabled person or his relative or to a person who regularly resides with or transports a physically disabled person.

Be it enacted by the Legislature of West Virginia.

That section six, article thirteen, 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 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

1 (a) Any owner of a Class A motor vehicle subject to
2 registration under the provisions of article three, chapter
3 seventeen-a of this code, who is:

4 (1) A physically handicapped person with limited
5 mobility;

6 (2) A relative of a person who is a physically
7 handicapped person with limited mobility;

8 (3) A person who regularly resides with a person who is
9 a physically handicapped person with limited mobility; or

10 (4) A person who regularly transports a person who is a
11 physically handicapped person with limited mobility, may
12 apply for a special registration plate or a mobile windshield
13 placard by submitting to the commissioner:

14 (i) An application therefor on a form prescribed and
15 furnished by the commissioner, specifying whether the
16 applicant desires a special registration plate or a mobile
17 windshield placard; and

18 (ii) A certificate issued by a person licensed to practice
19 medicine in this state stating that the applicant or the
20 applicant's spouse or a member of the applicant's
21 immediate family residing with him is a physically
22 handicapped person with limited mobility as defined in this
23 section.

24 Upon receipt of the application, the physician's
25 certificate and the registration fee, if he finds that the
26 applicant qualifies for the special registration plate or
27 mobile windshield placard provided for in this subsection,
28 the commissioner shall issue to such applicant an
29 appropriately designed and appropriately designated
30 special registration plate or mobile windshield placard. The
31 special plate shall be used in place of a regular license plate.

32 As used in this section, a physically handicapped person
33 with limited mobility is any person who suffers from a
34 permanent physical condition making it unduly difficult
35 and burdensome for such person to walk.

36 Any person who falsely or fraudulently obtains or seeks
37 to obtain the special plate or the mobile windshield placard
38 provided for in this subsection (a), and any person who
39 falsely certifies that a person is physically handicapped
40 with limited mobility in order that an applicant may be
41 issued the special plate, is guilty of a misdemeanor, and,
42 upon conviction thereof, in addition to any other penalty he

43 may otherwise incur, shall be fined not less than one
44 hundred dollars nor more than one thousand dollars, or
45 imprisoned in the county jail not more than one year, or
46 both fined and imprisoned.

47 (b) Any physically disabled person, any person who is a
48 relative of a physically disabled person, any person who
49 regularly resides with a physically disabled person, or any
50 person who regularly transports a physically disabled
51 person, may apply for a vehicle decal for a Class A vehicle
52 by submitting to the commissioner:

53 (1) An application therefor on a form prescribed and
54 furnished by the commissioner;

55 (2) A certificate issued by a person licensed to practice
56 medicine in this state stating that the applicant or the
57 applicant's relative is a physically disabled person, or that
58 the person regularly residing with the applicant or
59 regularly transported by the applicant is a physically
60 disabled person, as defined in this section, and stating the
61 expected duration of the disability; and

62 (3) A fee of one dollar.

63 Upon receipt of the application, the physician's
64 certificate and the registration fee, if he finds that the
65 applicant qualifies for the vehicle decal provided for in this
66 subsection, the commissioner shall issue to such applicant
67 an appropriately designed decal. The decal shall be
68 displayed on the motor vehicle in the manner prescribed by
69 the commissioner and shall be valid for such period of time
70 as the certifying physician has determined that the
71 disability will continue, which period of time, reflecting the
72 date of expiration, shall be conspicuously shown on the face
73 of the decal.

74 As used in this section, "physically disabled person"
75 means any person who has sustained a temporary disability
76 rendering it unduly difficult and burdensome for him to
77 walk.

78 Any person who falsely or fraudulently obtains or seeks
79 to obtain the vehicle decal provided for in this subsection,
80 and any person who falsely certifies that a person is
81 physically disabled in order that an applicant may be issued
82 the vehicle decal, is guilty of a misdemeanor, and, upon
83 conviction thereof, in addition to any other penalty he may
84 otherwise incur, shall be fined not less than fifty nor more

85 than one hundred dollars, or imprisoned in the county jail
86 not more than thirty days, or both fined and imprisoned.

87 (c) Free stopping, standing or parking places marked
88 "reserved for disabled persons" shall be designated in close
89 proximity to all state, county and municipal buildings and
90 other public facilities. Such places shall be reserved solely
91 for physically disabled and handicapped persons during the
92 hours that such buildings are open for business.

93 Any person whose vehicle properly displays a valid
94 special registration plate, mobile windshield placard or
95 decal, may park the vehicle for unlimited periods of time in
96 parking zones unrestricted as to length of parking time
97 permitted: *Provided*, That this privilege does not mean that
98 the vehicle may park in any zone where stopping, standing
99 or parking is prohibited or which creates parking zones for
100 special types of vehicles or which prohibits parking during
101 heavy traffic periods during specified rush hours or where
102 parking would clearly present a traffic hazard. To the
103 extent any provision of any ordinance of any political
104 subdivision of this state is contrary to the provisions of this
105 section, the provisions of this section shall take precedence
106 and shall apply.

107 The privileges provided for in this subsection shall apply
108 only during those times when the vehicle is being used for
109 the transportation of a physically handicapped or disabled
110 person. Any person who knowingly exercises, or attempts to
111 exercise, such privileges at a time when the vehicle is not
112 being used for the transportation of a physically
113 handicapped or disabled person is guilty of a misdemeanor,
114 and, upon conviction thereof, in addition to any other
115 penalty he may otherwise incur, shall be fined not less than
116 ten nor more than fifty dollars, or imprisoned in the county
117 jail for not more than thirty days, or both fined and
118 imprisoned.

119 (d) No person may stop, stand or park a motor vehicle in
120 an area designated, zoned or marked for the handicapped or
121 physically disabled, when such person is not physically
122 disabled or handicapped and does not have displayed upon
123 his vehicle a distinguishing insignia for the handicapped
124 issued by the commissioner: *Provided*, That any person in
125 the act of transporting a handicapped or physically
126 disabled person, as defined by this article, may stop, stand

127 or park a motor vehicle not displaying a distinguishing
128 insignia for the handicapped in an area designated, zoned
129 or marked for the handicapped or physically disabled for
130 the limited purposes of loading or unloading his
131 handicapped or physically disabled passenger: *Provided,*
132 *however,* That such vehicle shall be promptly moved after
133 the completion of such limited purposes.

134 Any person who violates the provisions of this subsection
135 is guilty of a misdemeanor, and, upon conviction thereof,
136 shall be fined not more than twenty-five dollars.

137 (e) The commissioner shall adopt and promulgate rules
138 and regulations in accordance with the provisions of
139 chapter twenty-nine-a of this code to effectuate the
140 provisions of this section.

CHAPTER 114

(Com. Sub. for H. B. 1327—By Delegate Smirl and Delegate Phillips)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section forty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; traffic regulations; public safety; equipment; requiring every driver who transports a child under the age of nine to use a child passenger safety device system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-46. Child passenger safety device required.

1 Every driver who transports a child under the age of
2 nine years in a passenger automobile, van or pickup
3 truck other than one operated for hire, shall, while such
4 motor vehicle is in motion and operated on a street or

5 highway of this state, provide for the protection of such
6 child by properly placing, maintaining and securing
7 such child in a child passenger safety device system
8 meeting applicable federal motor vehicle safety stand-
9 ards: *Provided*, That if such child is between the age of
10 three and eight, both inclusive, a vehicle seat belt shall
11 be sufficient to meet the requirements of this section.

12 Any person who violates any provision of this section
13 is guilty of a misdemeanor, and, upon conviction thereof,
14 shall be fined not less than ten dollars nor more than
15 twenty dollars.

16 A violation of this section shall not be deemed by
17 virtue of such violation to constitute evidence of
18 negligence or contributory negligence or comparative
19 negligence in any civil action or proceeding for
20 damages.

21 If any provision of this section or the application
22 thereof to any person or circumstance is held invalid,
23 such invalidity shall not affect other provisions or
24 applications of this section, and to this end the subsec-
25 tions of this section are declared to be severable.

26 If all seat belts in a vehicle are being used at the time
27 of examination by a law officer and the vehicle contains
28 more passengers than the total number of seat belts or
29 other safety devices as installed in compliance with
30 federal motor vehicle safety standards, the driver shall
31 not be considered as violating this section.

CHAPTER 115

(S. B. 164—By Senators Lucht and Cook)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the election date of municipal officers to the second Tuesday in June unless otherwise provided in the charter and

eliminating the requirement of separate election officials for municipal elections held on the same day as county-state primary elections.

Be it enacted by the Legislature of West Virginia:

That section five, article five, 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 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

PART II. REGULAR ELECTION OF OFFICERS.

§8-5-5. Regular election of officers; establishment of longer terms.

1 After the first election of officers of a city, town or vil-
2 lage, the regular election of officers shall be held on the
3 second Tuesday in June of the appropriate year, unless
4 otherwise provided in the charter of the city or the special
5 legislative charters of the towns or villages, as the case
6 may be.

7 A municipal election date established by a charter
8 provision may fall on the same day as the county-state
9 primary or general election only when the voting precinct
10 boundaries in the municipality coincide with the voting
11 precinct boundaries established by the county commission
12 or when the charter provides for separate registration
13 books. If a municipal election falls on the same day as the
14 county-state primary or general election, the municipality
15 and county may agree to use the county election officials in
16 the municipal elections, if practicable, or the municipality
17 may provide for separate election officials.

18 A municipal election date established by charter
19 provision may fall within twenty-five days of a county-
20 state primary or general election only where separate
21 registration books are provided and maintained for the
22 municipal election.

23 Any municipality which establishes its election date by
24 charter provision must comply with the provisions of this

25 section or the election date shall be the second Tuesday of
26 June. The language of this section shall not be construed to
27 prevent any city, town or village from amending the pro-
28 visions of its charter or special legislative charter, as the
29 case may be, to provide that its municipal election be held
30 on some day other than the second Tuesday in June.

31 Officers of a city may be elected for a four-year term at
32 the same election at which a proposed charter, proposed
33 charter revision or charter amendment providing for four-
34 year terms is voted upon. The ballots or ballot labels used
35 for the election of officers must indicate that the officers
36 will be elected for four-year terms if the proposed charter,
37 revision or amendment is approved. Officers of a town or
38 village may be elected for a four-year term upon approval
39 by a majority of the legal votes cast at a regular municipal
40 election of a proposition calling for four-year terms. The
41 ballots or ballot labels used for the election of officers must
42 indicate that the officers will be elected for four-year terms
43 if the proposition is approved.

CHAPTER 116

(H. B. 1937—By Delegate Roop and Delegate Ryan)

[Passed March 8, 1936; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipalities; general and specific powers; group insurance programs authorized; coverage for spouses and dependents of regular employees and for retired employees; and providing for guaranteed coverage of retirees, upon their payment of the full cost of coverage, as a condition precedent to a municipality changing insurance carriers.

Be it enacted by the Legislature of West Virginia:

That section eight, article twelve, 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 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-8. Group insurance programs authorized.

1 Every municipality shall have plenary power and
2 authority to negotiate for, secure and adopt for the
3 regular employees thereof (other than provisional,
4 temporary, emergency and intermittent employees) who
5 are in employee status with such municipality on and
6 after the effective date of this section and for their
7 spouses and dependents, a policy or policies of group
8 insurance written by a carrier or carriers chartered
9 under the laws of any state and duly licensed to do
10 business in this state and covering life; health; hospital
11 care; surgical or medical diagnosis, care, and treatment;
12 drugs and medicines; remedial care; other medical
13 supplies and services; or any other combination of these;
14 and any other policy or policies of group insurance
15 which in the discretion of the governing body bear a
16 reasonable relationship to the foregoing coverages. The
17 provisions and terms of any such group plan or plans
18 of insurance shall be approved in writing by the
19 insurance commissioner of this state as to form, rate and
20 benefits.

21 The municipality is hereby authorized and empow-
22 ered to pay the entire premium cost, or any portion
23 thereof, of said group policy or policies. Whenever the
24 above-described regular employees shall indicate in
25 writing that they have subscribed to any of the aforesaid
26 insurance plans on a group basis and the entire cost
27 thereof is not paid by the municipality, the municipality
28 is hereby authorized and empowered to make periodic
29 premium deductions of the amount of the contribution
30 each such subscribing employee is required to make for
31 such participation from the salary or wage payments
32 due each such subscribing employee as specified in a
33 written assignment furnished to the municipality by
34 each such subscribing employee.

35 When a participating employee shall retire from his
36 employment, he may, if he so elects, remain a member
37 of the group plan and retain coverage for his spouse and
38 dependents, by paying the entire premium for the
39 coverage involved. Spouses and dependents of any
40 deceased member may remain a member of the group
41 plan by paying the entire premium for the coverage:
42 *Provided*, That nothing herein shall be construed as
43 prohibiting the municipality from paying a portion or
44 all of the cost of any coverage. In the event that a
45 municipality changes insurance carriers, as a condition
46 precedent to any such change, the municipality shall
47 assure that all retirees, their spouses and dependents,
48 and the spouses and dependents of any deceased
49 member are guaranteed acceptance, at the same cost for
50 the same coverage as regular employees of similar age
51 groupings, their spouses and dependents.

CHAPTER 117

(Com. Sub. for S. B. 193—By Senator Boettner)

[Passed March 1, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-two, article fifteen of said chapter, all relating to requiring two years of continuous service immediately prior to examination for promotion from a lower grade to the next higher grade for paid police and fire department employees of municipalities.

Be it enacted by the Legislature of West Virginia:

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

Article

14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.
15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-17. Vacancies filled by promotions; eligibility for promotion; rights of chief.

1 Vacancies in positions in a paid police department of
2 a Class I or Class II city shall be filled, so far as practi-
3 cable, by promotions from among individuals holding
4 positions in the next lower grade in the department.
5 Promotions shall be based upon merit and fitness to be
6 ascertained by competitive examinations to be provided
7 by the policemen's civil service commission and upon
8 the superior qualifications of the individuals promoted,
9 as shown by their previous service and experience:
10 *Provided*, That except for the chief of police, no individ-
11 ual shall be eligible for promotion from the lower grade
12 to the next higher grade until such individual shall have
13 completed at least two years of continuous service in the
14 next lower grade in the department immediately prior to
15 said examination: *Provided, however*, That notwith-
16 standing the provisions of section six of this article, any
17 member of a paid police department of a Class I or Class
18 II city now occupying the office of chief of such paid
19 police department, or hereafter appointed to such office,
20 shall, except as hereinafter provided in this section, be
21 and shall continue to be entitled to all of the rights and
22 benefits of the civil service provisions of this article,
23 except that he may be removed from such office of chief
24 of police without cause, and the time spent by such mem-
25 ber in the office of such chief of police shall be added to
26 the time served by such member during the entire time

27 he was a member of said paid police department prior to
28 his appointment as chief, and shall in all cases of removal,
29 except for removal for good cause, retain the regular
30 rank within said paid police department which he held
31 at the time of his appointment to the office of chief of
32 police or which he has attained during his term of service
33 as chief of police. The provisions of this section shall be
34 construed to apply and to inure to the benefit of all
35 individuals who have ever been subject to the provisions
36 of this article. The commission shall have the power to
37 determine in each instance whether an increase in salary
38 constitutes a promotion.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-22. Vacancies filled by promotions; eligibility for promotion.

1 Vacancies in positions in a paid fire department shall be
2 filled, so far as practicable, by promotions from among
3 individuals holding positions in the next lower grade in
4 the department. Promotions shall be based upon merit
5 and fitness to be ascertained by competitive examinations
6 to be provided by the firemen's civil service commission
7 and upon the superior qualifications of the individuals
8 promoted, as shown by their previous service and experi-
9 ence: *Provided*, That no individual shall be eligible for
10 promotion from the lower grade to the next higher grade
11 until such individual shall have completed at least two
12 years of continuous service in the next lower grade in the
13 department immediately prior to said examination. The
14 commission shall have the power to determine in each
15 instance whether an increase in salary constitutes a pro-
16 motion.

CHAPTER 118

(Com. Sub. for S. B. 459—By Senator Tomblin)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, twelve and

seventeen, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections twelve and sixteen, article twenty of said chapter; to further amend said article twenty by adding thereto a new section, designated section one-b; to amend and reenact sections two, five and seven, article two-e, chapter thirteen of said code; that said chapter thirteen be further amended by adding thereto a new article, designated article two-f; to amend and reenact sections one, fifteen and twenty-two-a, article thirteen, chapter sixteen of said code; and to amend and reenact section twenty-four, article thirteen-a of said chapter, all relating to bonded indebtedness upon municipal waterworks, sewer systems and electric power systems; permitting the severance of combined municipal waterworks and sewage system and combined waterworks and electric power systems and the creation of a special fund for such purposes; permitting the severance of combined municipal waterworks and sewage systems; providing for the cancellation of outstanding bonded indebtedness upon such combined waterworks and sewage systems; permitting the reorganization of the governing board of such combined systems of the separate boards upon severance; acquisition of municipal waterworks system resulting from the severance of a combined waterworks and sewerage system included in the definition of enterprise; authorization of refunding bonds for a combined waterworks and sewerage system; and providing that a municipality may acquire sewerage system resulting from the severance of a combined waterworks and sewerage system; the creation of a special fund for municipal waterworks and electric power system bond requirements with the West Virginia municipal bond commission; providing direct payment of requirements on such bonds owned by the United States of America or any agency or department thereof; payment of interest on temporary financing for municipal waterworks and electric power systems from the proceeds of such financing until the maturity thereof; the creation from revenues of a special fund for municipal combined waterworks and sewerage system bond requirements with the West Virginia municipal bond commission; providing for direct payment of

requirements on such bonds owned by the United States of America or any agency or department thereof; payment of interest on temporary financing for combined municipal waterworks and sewerage systems from the proceeds of such financing until the maturity thereof; authorizing the appointment of a corporate trustee to act as escrow agent for the proceeds of refunding bonds; the issuance by public bodies of public obligations in registered or book-entry form; purpose of the article and that the article governs over charter provisions; defining terms; authorizing issuance in registered and book-entry form; powers of the registrar or his designee; allowing confidentiality and setting forth the application of the article to public obligations approved by voters; creation from net revenues of a municipal bond fund for municipal and sanitary district sewage bonds with the West Virginia municipal bond commission; providing for direct payment of bonds owned by the United States of America or any agency or department thereof; payment of interest on temporary financing for sewage works of municipal corporations and sanitary districts from the proceeds of such financing until the maturity thereof; and payment of interest on temporary financing for public service districts for water, sewerage and gas services from the proceeds of such financing until the maturity thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter

8. Municipal Corporations.

13. Public Bonded Indebtedness.**16. Public Health.****CHAPTER 8. MUNICIPAL CORPORATIONS.****Article****19. Municipal Waterworks and Electric Power Systems.****20. Combined Waterworks and Sewerage Systems.****ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.**

§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

§8-19-17. Grants, loans and advances.

§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

1 Subject to and in accordance with the provisions of this
 2 article, any municipality may acquire, construct, establish,
 3 extend, equip, repair, maintain and operate, or lease to
 4 others for operation, a waterworks system, including
 5 acquisition of the municipal waterworks system resulting
 6 from the severance of a combined waterworks and sewerage
 7 system pursuant to section one-b, article twenty of this
 8 chapter, or construct, maintain and operate additions,
 9 betterments and improvements to an existing waterworks
 10 system or an existing electric power system,
 11 notwithstanding any provision or limitation to the contrary
 12 in any other law or charter: *Provided*, That such
 13 municipality shall not serve or supply water facilities or
 14 electric power facilities or services within the corporate
 15 limits of any other municipality without the consent of the
 16 governing body of such other municipality.

17 When used in this article, the term "waterworks system"
 18 shall be construed to mean and include a waterworks
 19 system in its entirety or any integral part thereof, including
 20 mains, hydrants, meters, valves, standpipes, storage tanks,
 21 pump tanks, pumping stations, intakes, wells, impounding
 22 reservoirs, pumps, machinery, purification plants,
 23 softening apparatus and all other facilities necessary,
 24 appropriate, useful, convenient or incidental in connection
 25 with or to a water supply system.

26 When used in this article, the term "electric power
27 system" means a system or facility which produces electric
28 power in its entirety or any integral part thereof, including,
29 but not limited to, power lines and wires, power poles, guy
30 wires, insulators, transformers, generators, cables, power
31 line towers, voltage regulators, meters, power substations,
32 machinery and all other facilities necessary, appropriate,
33 useful, or convenient or incidental in connection with or to
34 an electric power supply system.

**§8-19-12. Service charges; sinking fund; amount of bonds;
additional bonds; surplus.**

1 (a) Every municipality issuing bonds under the
2 provisions of this article shall thereafter, so long as any of
3 such bonds remain outstanding, repair, maintain and
4 operate its waterworks or electric power system as
5 hereinafter provided and shall charge, collect and account
6 for revenues therefrom as will be sufficient to pay all repair,
7 maintenance and operation costs, provide a depreciation
8 fund, retire the bonds and pay the interest requirements of
9 the bonds as the same become due. The ordinance pursuant
10 to which any such bonds are issued shall pledge the
11 revenues derived from the waterworks or electric power
12 system to the purposes aforesaid and shall definitely fix and
13 determine the amount of revenues which shall be necessary
14 and set apart in a special fund for the bond requirements.
15 The amounts as and when so set apart into said special fund
16 for the bond requirements shall be remitted to the West
17 Virginia municipal bond commission to be retained and
18 paid out by said commission consistent with the provisions
19 of this article and the ordinance pursuant to which such
20 bonds have been issued: *Provided*, That payment of
21 principal of and interest on any bonds owned by the United
22 States of America or any agency or department thereof may
23 be made by the municipality directly to the United States of
24 America or said agency or department thereof. The bonds
25 hereby authorized shall be issued in such amounts as may
26 be determined necessary to provide funds for the purpose
27 for which they are authorized, and in determining the
28 amount of bonds to be issued it shall be proper to include
29 interest on the bonds for a period not beyond six months
30 from the estimated date of completion.

31 (b) If the proceeds of the bonds, because of error or
32 otherwise, shall be less than the cost of the property or
33 undertaking for which authorized, additional bonds may be
34 issued to provide the amount of such deficit and such
35 additional bonds shall be deemed to be of the same issue and
36 shall be entitled to payment from the same fund without
37 preference or priority over the bonds first authorized and
38 issued.

39 (c) If the proceeds of the bonds shall exceed the cost of
40 the property or undertaking, the surplus shall be converted
41 into the fund thereon.

PART V. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§8-19-17. Grants, loans and advances.

1 Any municipality is hereby empowered and authorized to
2 accept loans or grants and procure loans or temporary
3 advances evidenced by notes or other negotiable
4 instruments issued in the manner, and subject to the
5 privileges and limitations, set forth with respect to bonds
6 authorized to be issued under the provisions of this article,
7 for the purpose of paying part or all of the cost of
8 acquisition, construction, establishment, extension or
9 equipment of waterworks systems and the construction of
10 additions, betterments and improvements to existing
11 waterworks systems or to existing electric power systems,
12 and for the other purposes herein authorized, from any
13 authorized agency of the state or from the United States of
14 America or any federal or public agency or department of
15 the United States or any private agency, corporation or
16 individual, which loans or temporary advances, including
17 the interest thereon, may be repaid out of the proceeds of
18 bonds authorized to be issued under the provisions of this
19 article, the revenues of the said waterworks system or
20 electric power system or grants to the municipality from
21 any agency of the state or from the United States of America
22 or any federal or public agency or department of the United
23 States or any private agency, corporation or individual or
24 from any combination of such sources of payment, and to
25 enter into the necessary contracts and agreements to carry
26 out the purposes hereof with any agency of the state, the
27 United States of America or any federal or public agency or
28 department of the United States, or with any private

29 agency, corporation or individual. Any other provisions of
30 this article to the contrary notwithstanding, interest on any
31 such loan or temporary advance may be paid from the
32 proceeds thereof until the maturity of such notes or other
33 negotiable instrument.

34 In no event shall any such loan or temporary advance be a
35 general obligation of the municipality and such loans or
36 temporary advances, including the interest thereon, shall
37 be paid solely from the sources specified in this section.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-1b. Severance of combined system.

§8-20-12. Use of revenues; sinking fund.

§8-20-16. Grants, loans and advances.

§8-20-1b. Severance of combined system.

1 Any municipality which has combined its waterworks
2 and sewerage system under the provisions of this article, or
3 pursuant to provisions of any other law, may hereafter sever
4 said combined waterworks and sewerage system if the
5 following conditions are met:

6 (a) An ordinance is enacted by the governing body of the
7 municipality severing the combined waterworks and
8 sewerage system into a separate waterworks system and a
9 separate sewerage system.

10 (b) If revenue bonds or notes or other obligations with a
11 lien on or pledge of the revenues of said combined
12 waterworks and sewerage system, or any part thereof, are
13 outstanding, then the municipality must provide in said
14 ordinance (i) that the severance of the combined
15 waterworks and sewerage system is not effective until all
16 such outstanding revenue bonds or notes or other
17 obligations with a lien on or pledge of the revenues of the
18 system, or any part thereof, are paid and (ii) the method for
19 paying said outstanding revenue bonds or notes or other
20 obligations. For the purposes of this section, said
21 municipality may provide for payment of said outstanding
22 revenue bonds or notes or other obligations by:

23 (1) Depositing moneys and funds with the West Virginia
24 municipal bond commission or in escrow with a corporate
25 trustee, which may be a trust company or bank having
26 powers of a trust company within or without the state of
27 West Virginia selected by the issuer to pay interest when

28 due and to pay principal when due, whether at maturity or
29 earlier redemption;

30 (2) Depositing securities with the municipal bond
31 commission or said escrow trustee, the principal of and
32 earnings on which will provide moneys sufficient to pay
33 interest when due and to pay principal when due, whether
34 at maturity or earlier redemption; or

35 (3) Depositing with the municipal bond commission or
36 said escrow trustee any combination of the foregoing
37 sufficient to pay interest when due and to pay principal
38 when due, whether at maturity or earlier redemption.

39 (c) If the combined waterworks and sewerage system is
40 under the supervision and control of a separate committee,
41 board or commission, then the governing body of the
42 municipality must provide for the dissolution of such
43 committee, board or commission, and the creation of such
44 other committees, boards or commissions as may be
45 required by law.

§8-20-12. Use of revenues; sinking fund.

1 All revenues derived from the operation of any combined
2 waterworks and sewerage system under the provisions of
3 this article shall be set aside as collected and used only for
4 the purpose of paying the cost of repairing, maintaining and
5 operating such system, providing an adequate reserve fund,
6 an adequate depreciation fund, and paying the principal of
7 and interest upon the revenue bonds issued by the
8 municipality under the provisions of this article. The
9 ordinance pursuant to which any such bonds are issued
10 shall pledge the revenues derived from the combined
11 waterworks and sewerage system to the purposes aforesaid
12 and shall definitely fix and determine the amount of
13 revenues which shall be necessary and set apart in a special
14 fund for the bond requirements. The amounts as and when
15 so set apart into said special fund for the bond requirements
16 shall be remitted to the West Virginia municipal bond
17 commission to be retained and paid out by said commission
18 consistent with the provisions of this article and the
19 ordinance pursuant to which such bonds have been issued:
20 *Provided*, That payments of principal of and interest on any
21 bonds owned by the United States of America or any agency
22 or department thereof may be made by the municipality

23 directly to the United States of America or said agency or
24 department thereof.

PART IV. GRANTS, LOANS AND ADVANCES; CUMULATIVE
AUTHORITY.

§8-20-16. Grants, loans and advances.

1 Any municipality is hereby empowered and authorized to
2 accept loans or grants and procure loans or temporary
3 advances evidenced by notes or other negotiable
4 instruments issued in the manner, and subject to the
5 privileges and limitations, set forth with respect to bonds
6 authorized to be issued under the provisions of this article,
7 for the purpose of paying part or all of the cost of
8 acquisition, construction, establishment, extension or
9 equipment of combined waterworks and sewerage systems
10 and the construction of additions, betterments and
11 improvements thereto, and for the other purposes herein
12 authorized, from any authorized agency of the state or from
13 the United States of America or any federal or public
14 agency or department of the United States or any private
15 agency, corporation or individual, which loans or
16 temporary advances, including the interest thereon, may be
17 repaid out of the proceeds of bonds authorized to be issued
18 under the provisions of this article, the revenues of the said
19 combined waterworks and sewerage system or grants to the
20 municipality from any agency of the state or from the
21 United States of America or any federal or public agency or
22 department of the United States or any private agency,
23 corporation or individual or from any combination of such
24 sources of payment, and to enter into the necessary
25 contracts and agreements to carry out the purposes hereof
26 with any agency of the state, the United States of America
27 or any federal or public agency or department of the United
28 States, or with any private agency, corporation or
29 individual. Any other provisions of this article
30 notwithstanding, interest on any such loans or temporary
31 advances may be paid from the proceeds thereof until the
32 maturity of such notes or other negotiable instrument.

33 In no event shall any such loan or temporary advance be a
34 general obligation of the municipality and such loans or
35 temporary advances, including the interest thereon, shall
36 be paid solely from the sources specified in this section.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.**Article****2E. Revenue Bond Refunding Act.****2F. Public Obligations Registration Act.****ARTICLE 2E. REVENUE BOND REFUNDING ACT.**

§13-2E-2. Definitions.

§13-2E-5. Issuance of refunding bonds; application of proceeds.

§13-2E-7. Authorization for issuance.

§13-2E-2. Definitions.

1 The following terms or words wherever used or referred
2 to in this article shall have the following meaning, unless a
3 different meaning plainly appears from the context:

4 The term "public body" means any city, town, village,
5 county, public service district, sanitary district, political
6 subdivision or any other similar public entity now or
7 hereafter created, and the state of West Virginia acting
8 through any of its agencies, boards, commissions or
9 departments, having power to issue revenue bonds.

10 The term "governing body" means a board, council or
11 other body having power to borrow money on behalf of a
12 public body.

13 The term "law" means any act or statutes, general, special
14 or local, of this state, including, without being limited to,
15 the charter of any public body.

16 The term "enterprise" means any work, undertaking, or
17 project which the public body is or may hereafter be
18 authorized to acquire or construct and from which the
19 public body has heretofore derived or may hereafter derive
20 revenues, for the refinancing of which enterprise refunding
21 bonds are issued under this article, and such enterprise
22 shall include all improvements, betterments, extensions
23 and replacements thereto, and all appurtenances, facilities,
24 lands, rights in land, water rights, franchises, and
25 structures in connection therewith or incidental thereto;
26 and for the purposes of this article "enterprise" includes the
27 waterworks system or the sewerage system, or both said
28 systems, resulting from the severance of a combined
29 waterworks and sewerage system pursuant to section one-
30 b, article twenty, chapter eight of this code, all as the
31 governing body shall authorize in the ordinance

32 authorizing said severance.

33 The term "revenues" means all fees, tolls, rates, rentals
34 and charges to be levied and collected in connection with
35 and all other income and receipts of whatever kind or
36 character derived by the public body from the operation of
37 any enterprise or arising from any enterprise, and including
38 earnings derived from investments and bank deposits.

39 The term "revenue bonds" means notes, bonds,
40 certificates or other obligations of a public body heretofore
41 or hereafter issued and outstanding under any law and
42 which by their terms are payable from the revenues derived
43 by such public body from the operation of an enterprise.

44 The term "refunding bonds" means notes, bonds,
45 certificates or other obligations of a public body issued
46 pursuant to this article.

47 The term "holder of bonds" or "bondholder" or any
48 similar term means any person who shall be the bearer of
49 any outstanding refunding bond or refunding bonds
50 registered to bearer or not registered, or the registered
51 owner of any such outstanding refunding bond or refunding
52 bonds which shall at the time be registered other than to
53 bearer.

54 The words "net interest cost" when referring to an
55 outstanding issue of revenue bonds to be refunded, means
56 the total amount of interest which would accrue on such
57 revenue bonds from the date of the refunding bonds to the
58 respective maturity dates of the outstanding revenue bonds
59 to be refunded, without regard to any retained options of
60 redemption.

61 The words "net interest cost" when referring to a
62 proposed issue of refunding bonds, means the total amount
63 of interest to accrue on the refunding bonds from their date
64 to their respective maturities, without regard to any
65 retained options of redemption, plus the amount of any
66 discount below par or less the amount of any premium
67 above par at which the bonds may be sold.

68 The words "net effective interest rate" when referring to
69 a proposed issue of refunding bonds, means the net interest
70 cost of said refunding bonds divided by the product
71 obtained by multiplying the aggregate principal amount of
72 such refunding bonds maturing on each maturity date by
73 the number of years from the date of the refunding bonds to

74 their respective maturities, without regard to any retained
75 options of redemption.

76 The term "certified public accountant" means an
77 independent certified public accountant or firm of certified
78 public accountants licensed to practice in this state.

79 Words importing the singular number shall include the
80 plural number in each case and vice versa, and words
81 importing persons shall include firms and corporations.

**§13-2E-5. Issuance of refunding bonds; application of
proceeds.**

1 Refunding bonds issued under this article may be
2 exchanged for not less than a like principal amount of the
3 revenue bonds to be refunded, or may be sold at public or
4 private sale, or may be exchanged in part and sold in part, in
5 such manner and upon such terms as may be determined by
6 the governing body to be for the best interests of the public
7 body: *Provided*, That such refunding bonds shall not be sold
8 or exchanged at a price lower than a price which will show a
9 net saving to the issuer after deducting all expenses of the
10 refunding: *Provided, however*, That if the governing body
11 determines that one of the purposes of issuing such
12 refunding bonds is to effect the release, termination or
13 modification of liens, restrictions, conditions or limitations
14 imposed in connection with the bonds which are to be
15 refunded, then such refunding bonds may be issued without
16 the necessity of showing a net saving to the issuer, in which
17 event such refunding bonds shall bear interest at such rate
18 or rates as the governing body may determine, but such rate
19 or rates shall not exceed the maximum stated rate of
20 interest which the revenue bonds to be refunded thereby
21 could bear if they were being issued as of the date of
22 issuance of such refunding bonds, and such refunding
23 bonds may not be sold or exchanged at a price which would
24 result in a net interest cost in excess of the maximum net
25 interest cost which the revenue bonds to be refunded could
26 be sold or exchanged for if they were being issued as of the
27 date of issuance of such refunding bonds.

28 If any such refunding bonds are to be sold, they may be
29 issued in such principal amount as may be determined
30 advisable by the governing body including, without
31 limitation, the aggregate principal amount of the revenue

32 bonds to be refunded, interest accrued and to accrue to the
33 date or dates on which the revenue bonds being refunded
34 are scheduled to mature or to be redeemed prior to
35 maturity, any redemption premiums which must be paid in
36 order to refund such outstanding revenue bonds and any
37 costs and expenses of issuing the refunding bonds and
38 providing for retirement of revenue bonds to be refunded. If
39 sold, the net proceeds shall either be immediately applied to
40 the payment or redemption and retirement of the revenue
41 bonds to be refunded, or the net proceeds of the refunding
42 bonds may be invested at the discretion and under the
43 supervision of the escrow agent in whole, or in part, (a) in
44 direct obligations issued by the United States of America or
45 one of its agencies, (b) in obligations unconditionally
46 guaranteed by the United States of America as to principal
47 and interest, or (c) in certificates of deposit of a banking
48 corporation or association which is a member of the federal
49 deposit insurance corporation, or successor; but any such
50 certificates of deposit must be fully secured as to both
51 principal and interest by pledged collateral consisting of
52 direct obligations of or obligations guaranteed by the
53 United States of America having a market value, excluding
54 accrued interest, at all times at least equal to the amount of
55 the principal of an accrued interest on such certificates of
56 deposit. Any such investments must mature, or be payable
57 in advance of maturity at the option of the holder, and must
58 bear interest in such manner as to provide funds which,
59 together with uninvested money placed in the hereinafter
60 mentioned escrow, will be sufficient to pay when due or
61 called for redemption the revenue bonds refunded, together
62 with interest accrued and to accrue thereon and redemption
63 premiums, if any, and such refunding bond proceeds or
64 obligations so purchased therewith shall, and with other
65 funds legally available to the public body for such purpose
66 may, be deposited in escrow with the West Virginia
67 municipal bond commission or a corporate trustee, which
68 may be a trust company or bank having powers of a trust
69 company within or without the state of West Virginia, to be
70 selected by the issuer to be held in trust for the payment and
71 redemption of the revenue bonds refunded, and such money
72 and obligations and any reinvestment thereof shall be held
73 in trust by such escrow agent for the payment of interest on

74 the refunded bonds when due, and principal thereof and
75 applicable redemption premiums, if any, when due, or upon
76 the date or dates for which they shall have been called for
77 redemption, or upon an earlier voluntary surrender at the
78 option of the escrow agent; provided if interest earned by
79 any investment in such escrow is shown to be in excess of
80 the amounts required from time to time for the payment of
81 interest on and principal of the refunded revenue bonds,
82 including applicable redemption premium, then such
83 excess may be withdrawn from escrow and disbursed by the
84 public body as are other revenues of the enterprise. Any
85 moneys in the sinking or reserve funds or other funds
86 maintained for the outstanding revenue bonds to be
87 refunded may be applied in the same manner and for the
88 same purpose as are the net proceeds of refunding bonds or
89 may be deposited in the special fund or any reserve funds
90 established for account of the refunding bonds. The term
91 "net proceeds" as used above shall mean the gross proceeds
92 of the refunding bonds after the deduction therefrom of all
93 accrued interest, costs and expenses incurred in connection
94 with the authorization and issuance of the refunding bonds
95 and the retirement of the outstanding revenue bonds, and
96 including all costs and expenses resulting from price
97 variations to par or otherwise incurred in the purchase of
98 obligations for escrow and in the disposition of the
99 refunding bonds.

§13-2E-7. Authorization for issuance.

1 Refunding bonds and all acts required to be authorized
2 hereunder shall be authorized in the manner in which the
3 bonds to be refunded were authorized and issued: *Provided*,
4 That refunding bonds of a system resulting from the
5 severance of a combined municipal waterworks and
6 sewerage system shall to the extent applicable be
7 authorized and issued under the terms and provisions of
8 law, including, but not limited to, interest rates and net
9 interest costs, under which revenue bonds of such resulting
10 system would be authorized and issued.

ARTICLE 2F. PUBLIC OBLIGATIONS REGISTRATION ACT.

§13-2F-1. How article cited.

§13-2F-2. Purposes; article governs over charter provisions.

§13-2F-3. Definitions.

§13-2F-4. Authority to issue public obligations in registered and book entry forms.

§13-2F-5. Powers of official registrar; designee.

§13-2F-6. Confidentiality.

§13-2F-7. Application to public obligations approved by voters.

§13-2F-1. How article cited.

- 1 This article may be cited as "Public Obligations
- 2 Registration Act."

§13-2F-2. Purposes; article governs over charter provisions.

- 1 The purpose of this article is to provide a mechanism for
- 2 public bodies in the state to issue public obligations in
- 3 compliance with section 310(b)(1) of the tax equity and
- 4 fiscal responsibility act of one thousand nine hundred
- 5 eighty-two, United States Internal Revenue Code section
- 6 103(j), as amended.

- 7 To fulfill the purpose, this article shall govern
- 8 notwithstanding any charter provisions.

§13-2F-3. Definitions.

- 1 The following terms wherever used or referred to in this
- 2 article shall have the following meanings, unless a different
- 3 meaning plainly appears from the context:

- 4 The term "public body" means any city, town, county
- 5 commission, building commission, board of education,
- 6 public service district, political subdivision or any other
- 7 public entity, whether created before, on or after the
- 8 effective date of this article, and the state of West Virginia
- 9 acting through any of its agencies, boards, commissions or
- 10 departments, having power to issue public obligations.

- 11 The term "public obligation" means notes, bonds,
- 12 certificates or other obligations of a public body issued and
- 13 outstanding on and after the first day of July, one thousand
- 14 nine hundred eighty-six.

- 15 The term "registered" means, with respect to a public
- 16 obligation, an obligation the ownership of which is noted on
- 17 books of registration kept by a registrar and which is
- 18 represented by certificates or other instruments to which no
- 19 coupons for interest payments are attached.

- 20 The term "book-entry" means, with respect to a public
- 21 obligation, an obligation the ownership of which is noted on
- 22 books of registration kept by a registrar, but which

23 ownership is not represented by any instrument.

24 The term "official registrar" means the official
25 designated by the specific provisions of this code pursuant
26 to which a public obligation is issued as the registrar of the
27 public obligation and, in lieu of statutory designation, the
28 person so designated by the act of the public body
29 authorizing the issuance of the specific public obligation.

**§13-2F-4. Authority to issue public obligations in registered
and book entry forms.**

1 Notwithstanding any other provision of this code to the
2 contrary, on and after the first day of July, one thousand
3 nine hundred eighty-six, any public body may issue public
4 obligations in registered or book entry form in addition to
5 any form authorized by the specific provisions of this code
6 pursuant to which the public obligations are issued.

§13-2F-5. Powers of official registrar; designee.

1 The official registrar shall (a) act as transfer agent or
2 registrar for the exchange or transfer of registered public
3 obligations or maintain the records so that public
4 obligations in book-entry form may be effected, or (b)
5 contract with or otherwise designate a bank, trust company
6 or other person to act as transfer agent or registrar for the
7 registered public obligations or maintain the records so that
8 public obligations in book-entry form may be effected. The
9 bank, trust company or other person may include the
10 federal government or any of its agencies or
11 instrumentalities and may be located or have its principal
12 office within or without the state. Public obligations in
13 book-entry form shall be effected by means of entries on the
14 record of the official registrar or his designee which shall
15 reflect the description of the issue, the principal amount,
16 the interest rate, the maturity date and the owner of the
17 public obligation and other information as is considered by
18 the official registrar or his designee to be appropriate. The
19 official registrar or his designee may effect conversion
20 between book-entry public obligations and registered
21 public obligations for owners of public obligations who
22 request a change. The official registrar or his designee shall
23 issue a confirmation of the transaction in the form of a
24 written advice. The official registrar or his designee shall

25 have such additional powers as are necessary to effectuate
 26 the purposes of this article.

§13-2F-6. Confidentiality.

1 Notwithstanding any other provision of this code to the
 2 contrary, the books of registry held by the official registrar
 3 or his designee shall be confidential, and the information
 4 contained therein shall not be available to the public.

§13-2F-7. Application to public obligations approved by voters.

1 The provisions of this article shall be effective with
 2 respect to public obligations which have prior to the first
 3 day of July, one thousand nine hundred eighty-six, been
 4 approved by the voters of the issuer of the public
 5 obligations at an election on the question of issuing public
 6 obligations in coupon and registered form, or in coupon
 7 form only, and the public obligations need not be
 8 resubmitted to the voters for the purpose of approving the
 9 issuance of the public obligations in registered form only.

CHAPTER 16. PUBLIC HEALTH.

Article

13. Sewage Works of Municipal Corporations and Sanitary Districts.

13A. Public Service Districts for Water, Sewerage and Gas Services.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

§16-13-15. Sinking fund; transfer of balance of net revenues.

§16-13-22a. Grants, loans and advances.

§16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

1 Any municipal corporation and/or sanitary district in the
 2 state of West Virginia is hereby authorized and empowered
 3 to own, acquire, construct, equip, operate and maintain
 4 within and/or without the corporate limits of such
 5 municipal corporation, a sewage collection system and/or a
 6 sewage treatment plant or plants, intercepting sewers,
 7 outfall sewers, force mains, pumping stations, ejector
 8 stations, and all other appurtenances necessary or useful

9 and convenient for the collection and/or treatment,
10 purification and disposal, in a sanitary manner, of the
11 liquid and solid waste, sewage, night soil and industrial
12 waste of such municipal corporation and/or sanitary
13 district, including acquisition of the municipal sewerage
14 system resulting from the severance of a combined
15 waterworks and sewerage system pursuant to section one-
16 b, article twenty, chapter eight of this code, and shall have
17 authority to acquire by gift, grant, purchase,
18 condemnation, or otherwise, all necessary lands, rights-of-
19 way and property therefor, within and/or without the
20 corporate limits of such municipal corporation and/or
21 sanitary district, and to issue revenue bonds to pay the cost
22 of such works and property; and any such municipality may
23 serve and supply the facilities of such sewerage system
24 within the corporate limits of such municipality and within
25 the area extending twenty miles beyond the corporate
26 limits of such municipality: *Provided*, That such
27 municipality shall not serve or supply the facilities of such
28 sewerage system within the corporate limits of any other
29 municipality without the consent of the governing body
30 thereof. No obligations shall be incurred by any such
31 municipality and/or sanitary district in such construction
32 or acquisition except such as is payable solely from the
33 funds provided under the authority of this article.

§16-13-15. Sinking fund; transfer of balance of net revenues.

1 At or before the issuance of any such bonds the governing
2 body shall by said ordinance create a sinking fund, to be
3 remitted to and administered by the West Virginia
4 municipal bond commission, for the payment of the bonds
5 and the interest thereon and the payment of the charges of
6 banks or trust companies for making payment of such
7 bonds or interest, and shall set aside and pledge a sufficient
8 amount of the net revenues of the works, hereby defined to
9 mean the revenues of the works remaining after the
10 payment of the reasonable expense of operation, repair and
11 maintenance, such amount to be paid by the board into said
12 sinking fund at intervals to be determined by ordinance
13 prior to issuance of the bonds, for: (a) The interest upon
14 such bonds as such interest shall fall due; (b) the necessary
15 fiscal agency charges for paying bonds and interest; (c) the

16 payment of the bonds as they fall due, or, if all bonds mature
17 at one time, the proper maintenance of a sinking fund in
18 such amounts as are necessary and sufficient for the
19 payment thereof at such time; (d) a margin for safety and for
20 the payment of premiums upon bonds retired by call or
21 purchase as herein provided, which margin, together with
22 any unused surplus of such margin carried forward from
23 the preceding year, shall equal ten percent of all other
24 amounts so required to be paid into the sinking fund. Such
25 required payments shall constitute a first charge upon all
26 the net revenue of the works. Prior to the issuance of the
27 bonds the board may by ordinance be given the right to use
28 or direct the West Virginia municipal bond commission to
29 use such sinking fund or any part thereof in the purchase of
30 any of the outstanding bonds payable therefrom at the
31 market price thereof, but not exceeding the price, if any, at
32 which the same shall in the same year be payable or
33 redeemable, and all bonds redeemed or purchased shall
34 forthwith be cancelled and shall not again be issued. After
35 the payments into such fund as herein required, the board
36 may at any time in its discretion transfer all or any part of
37 the balance of the net revenues, after reserving an amount
38 deemed by the board sufficient for operation, repair and
39 maintenance for an ensuing period of not less than twelve
40 months and for depreciation, into the sinking fund or into a
41 fund for extensions, betterments and additions to the
42 works. The amounts of the balance of the net revenue as and
43 when so set apart shall be remitted to the West Virginia
44 municipal bond commission to be retained and paid out by
45 said commission consistent with the provisions of this
46 article and with the ordinance pursuant to which such
47 bonds have been issued. The West Virginia municipal bond
48 commission is hereby authorized to act as fiscal agent for
49 the administration of such sinking fund, under any
50 ordinance passed pursuant to the provisions of this article,
51 and shall invest all such sinking funds as provided by
52 general law. Notwithstanding the foregoing, payments of
53 principal and interest on any bonds owned by the United
54 States of America or any agency or department thereof may
55 be made by the governing body directly thereto.

§16-13-22a. Grants, loans and advances.

1 Any municipality is authorized and empowered to accept

2 loans or grants and procure loans or temporary advances
3 evidenced by notes or other negotiable instruments issued
4 in the manner, and subject to the privileges and limitations,
5 set forth with respect to bonds authorized to be issued
6 under the provisions of this article, for the purpose of
7 paying part or all of the cost of acquisition or construction
8 of said sewage works and the construction of betterments
9 and improvements thereto, and for the other purposes
10 herein authorized, from any authorized agency of the state
11 or from the United States of America or any federal or
12 public agency or department of the United States or any
13 private agency, corporation or individual, which loans or
14 temporary advances, including the interest thereon, may be
15 repaid out of the proceeds of bonds authorized to be issued
16 under the provisions of this article, the revenues of the said
17 sewage works or grants to the municipality from any agency
18 of the state or from the United States of America or any
19 federal or public agency or department of the United States
20 or any private agency, corporation or individual or from
21 any combination of such sources of payment, and to enter
22 into the necessary contracts and agreements to carry out the
23 purposes hereof with any agency of the state, the United
24 States of America or any federal or public agency or
25 department of the United States, or with any private
26 agency, corporation or individual. Any other provisions of
27 this article to the contrary notwithstanding, interest on any
28 such loans or temporary advances may be paid from the
29 proceeds thereof until the maturity of such notes or other
30 negotiable instrument.

31 In no event shall any such loan or temporary advance be a
32 general obligation of the municipality and such loans or
33 temporary advances, including the interest thereon, shall
34 be paid solely from the sources specified in this section.

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE
AND GAS SERVICES.**

**§16-13A-24. Acceptance of loans, grants or temporary
advances.**

1 Any public service district created pursuant to the
2 provisions of this article is authorized and empowered to
3 accept loans or grants and procure loans or temporary
4 advances evidenced by notes or other negotiable

5 instruments issued in the manner, and subject to the
6 privileges and limitations, set forth with respect to bonds
7 authorized to be issued under the provisions of this article,
8 for the purpose of paying part or all of the cost of
9 construction or acquisition of water systems, sewage
10 systems or gas facilities, or all of these, and the other
11 purposes herein authorized, from any authorized agency or
12 from the United States of America or any federal or public
13 agency or department of the United States or any private
14 agency, corporation or individual, which loans or
15 temporary advances, including the interest thereon, may be
16 repaid out of the proceeds of the bonds authorized to be
17 issued under the provisions of this article, the revenues of
18 the said water system, sewage system or gas facilities or
19 grants to the public service district from any authorized
20 agency or from the United States of America or any federal
21 or public agency or department of the United States or from
22 any private agency, corporation or individual or from any
23 combination of such sources of payment, and to enter into
24 the necessary contracts and agreements to carry out the
25 purposes hereof with any authorized agency or the United
26 States of America or any federal or public agency or
27 department of the United States, or with any private
28 agency, corporation or individual. Any other provisions of
29 this article to the contrary notwithstanding, interest on any
30 such loans or temporary advances may be paid from the
31 proceeds thereof until the maturity of such notes or other
32 negotiable instrument.



CHAPTER 119

(H. B. 1837—By Delegate Seacrist and Delegate Haynes)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for additional disability pension benefits for policemen and firemen at the rate of one percent per year of military service up to a maximum

of four percent.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-24. Disability pensions.

1 (a) The monthly sum to be paid to each member
2 eligible for disability under the provisions of section
3 twenty-three-a of this article, shall be equal to sixty
4 percent of the monthly salary being received by such
5 member, at the time he is so disabled, or the sum of five
6 hundred dollars per month, whichever shall be greater:
7 *Provided*, That the limitation provided in subsection (b)
8 of this section is not exceeded.

9 (b) Effective for any member who becomes eligible for
10 disability benefits on or after the first day of July, one
11 thousand nine hundred eighty-one, under the provisions
12 of section twenty-three-a of this article, as a proximate
13 result of service rendered in the performance of his
14 duties within such departments, his monthly disability
15 payment as provided in subsection (a) of this section
16 shall not, when aggregated with the monthly amount of
17 state workers' compensation, result in such disabled
18 member receiving a total monthly income from such
19 sources in excess of one hundred percent of the basic
20 compensation which is paid to members holding the
21 same position which such member held within such
22 department at the time of his disability. Lump sum
23 payments of state workers' compensation benefits shall
24 not be considered for purposes of this subsection unless
25 such lump sum payments represent commuted values of
26 monthly state workers' compensation benefits.

27 (c) Any member who has served on active duty with

28 the armed forces of the United States as described in
 29 section twenty-seven of this article, whether prior or
 30 subsequent to becoming a member of a paid police or
 31 fire department covered by the provisions of this article,
 32 and who, on the first day of July, one thousand nine
 33 hundred eighty-six, is receiving or thereafter receives a
 34 disability pension, shall receive in addition to the sixty
 35 percent or minimum five hundred dollars authorized in
 36 subsection (a) of this section, one additional percent for
 37 each year served in active military duty, up to a
 38 maximum of four additional percent.

CHAPTER 120

(S. B. 392—By Senator Boettner)

[Passed March 1, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to retirement benefits; policemen's pension and relief fund; firemen's pension and relief fund; increasing the amount of death benefits paid to a dependent child from ten percent of the member's pension.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-26. Death benefits.

- 1 (a) In case:
- 2 (1) Any member of a paid police or fire department who
- 3 has been in continuous service for more than five years dies

4 from any cause other than as specified in subsection (b) of
5 this section before retirement on a disability pension under
6 the provisions of, prior to the first day of July, one thousand
7 nine hundred eighty-one, section twenty-four of this
8 article, or after the thirtieth day of June, one thousand nine
9 hundred eighty-one, sections twenty-three-a and twenty-
10 four of this article or a retirement pension under the
11 provisions of subsection (a) or both subsections (a) and (b),
12 section twenty-five of this article, leaving in either case
13 surviving a spouse, or any dependent child or children
14 under the age of eighteen years, or dependent father or
15 mother or both, or any dependent brothers or sisters or both
16 under the age of eighteen years; or

17 (2) Any former member of any such department who is
18 on a disability pension prior to the first day of July, one
19 thousand nine hundred eighty-one, under section twenty-
20 four of this article, or after the thirtieth day of June, one
21 thousand nine hundred eighty-one, under sections twenty-
22 three-a and twenty-four of this article, or is receiving or is
23 entitled to receive retirement pension benefits under the
24 provisions of subsection (a) or both subsections (a) and (b),
25 section twenty-five of this article, dies from any cause other
26 than as specified in subsection (b) of this section leaving in
27 either case surviving a spouse or any dependent child or
28 children under the age of eighteen years or dependent
29 father or mother or both, or any dependent brothers or
30 sisters or both under the age of eighteen years; then in any of
31 the cases set forth above in (1) and (2) the board of trustees
32 of such pension and relief fund shall, immediately following
33 the death of such member, pay to or for each of such entitled
34 surviving dependents the following pension benefits: To
35 such spouse, until death or remarriage, a sum per month
36 equal to sixty percent of such member's pension or, in the
37 event such member was not receiving a pension at the time
38 of his death, a sum per month equal to sixty percent of the
39 monthly retirement pension such member would have been
40 entitled to receive pursuant to section twenty-five of this
41 article on the date of his death if such member had then
42 been eligible for a retirement pension thereunder, or the
43 sum of three hundred dollars per month, whichever is
44 greater; to each such dependent child, a sum per month
45 equal to twenty percent of such member's pension or, in the
46 event such member was not receiving a pension on the date

47 of his death, a sum per month equal to twenty percent of the
48 monthly retirement pension such member would have been
49 entitled to receive pursuant to section twenty-five of this
50 article on the date of his death if such member had then
51 been eligible for a retirement pension thereunder, or until
52 such child attains the age of eighteen years or marries,
53 whichever first occurs; to each such dependent orphaned
54 child, a sum per month equal to twenty-five percent of such
55 member's pension or, in the event such member was not
56 receiving a pension at the time of his death, a sum per month
57 equal to twenty-five percent of the monthly retirement
58 pension such member would have been entitled to receive
59 pursuant to section twenty-five of this article on the date of
60 his death if such member had then been eligible for a
61 retirement pension thereunder, until such child attains the
62 age of eighteen years or marries, whichever first occurs; to
63 each such dependent orphaned child, a sum per month
64 equal to twenty-five percent of such member's pension or,
65 in the event such member was not receiving a pension on the
66 date of his death, a sum per month equal to twenty-five
67 percent of the monthly retirement pension such member
68 would have been entitled to receive pursuant to section
69 twenty-five of this article on the date of his death if such
70 member had then been eligible for a retirement pension
71 thereunder, until such child attains the age of eighteen
72 years or marries, whichever first occurs; to each such
73 dependent father or mother, a sum per month for each equal
74 to ten percent of such member's pension or, in the event
75 such member was not receiving a pension on the date of his
76 death, a sum per month equal to ten percent of the monthly
77 retirement pension such member would have been entitled
78 to receive pursuant to section twenty-five of this article on
79 the date of his death if such member had then been eligible
80 for a retirement pension thereunder; to each such
81 dependent brother or sister, the sum of fifty dollars per
82 month until such individual attains the age of eighteen
83 years or marries, whichever first occurs, but in no event
84 shall the aggregate amount paid to such brothers and sisters
85 exceed one hundred dollars per month. If at any time,
86 because of the number of dependents, all such dependents
87 cannot be paid in full as herein provided, then each
88 dependent shall receive his pro rata share of such payments.
89 In no case shall the payments to the surviving spouse and

90 children be cut below sixty-five percent of the total amount
91 paid to all dependents.

92 (b) The surviving spouse, child or children, or
93 dependent father or mother, or dependent brothers or
94 sisters, of any such member who dies by reason of service
95 rendered in the performance of such member's duties shall,
96 regardless of the length of such member's service and
97 irrespective of whether such member was or was not
98 entitled to receive, or was or was not receiving, disability
99 pension or temporary disability payments at the time of his
100 death, receive the death benefits provided for in subsection
101 (a) of this section. If such member had less than three years'
102 service at the time of his death, the member's pension shall
103 be computed on the basis of the actual number of years of
104 service.

105 (c) If a member dies without leaving a spouse,
106 dependent child or children, or dependent father or mother,
107 or dependent brothers or sisters, his contributions to the
108 fund plus six percent interest shall be refunded to the
109 named beneficiary or, if no beneficiary has been named, to
110 his estate to the extent that such contributions plus interest
111 exceed any disability or retirement benefits that he may
112 have received before his death.

113 (d) The provisions of this section shall not be construed
114 as creating or establishing any contractual or vested rights
115 in favor of any individual who may be or become qualified
116 as a beneficiary of the death benefits herein authorized to
117 be made, all the provisions hereof and benefits provided for
118 hereunder being expressly subject to such subsequent
119 legislative enactments as may provide for any change,
120 modification or elimination of the beneficiaries or benefits
121 specified herein.

CHAPTER 121

(H. B. 1128—By Delegate Love and Delegate Mastrantoni)

[Passed February 18, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article

twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal planning commission membership requirements; county planning commission membership requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. PLANNING AND ZONING.

§8-24-5. Municipal planning commission generally.

§8-24-6. County planning commission generally.

§8-24-5. Municipal planning commission generally.

1 A municipal planning commission shall consist of not
2 less than five nor more than fifteen individuals, the
3 exact number to be specified in the ordinance creating
4 such commission, all of whom shall be freeholders and
5 residents of the municipality, who shall be qualified by
6 knowledge and experience in matters pertaining to the
7 development of the municipality, who shall include
8 representatives of business, industry and labor, and who
9 shall be nominated by the administrative authority and
10 confirmed by the governing body of the municipality or
11 appointed by the governing body where the administra-
12 tive authority and governing body are the same. At least
13 three fifths of all of the members must have been
14 residents of the municipality for at least one year prior
15 to nomination and confirmation or appointment. One
16 member of the commission shall also be a member of
17 the governing body of the municipality and one member
18 shall also be a member of the administrative depart-
19 ment of the municipality, the term of these two
20 members to be coextensive with the term of office to
21 which they have been elected or appointed, unless the
22 governing body and administrative authority of the
23 municipality at the first regular meeting of the commis-
24 sion each year designate others to serve as the municipi-
25 pality's representatives. The remaining members of the
26 commission first selected shall serve respectively for

27 terms of one year, two years and three years, divided
28 equally or as nearly equally as possible between these
29 terms. Thereafter, members shall be selected for terms
30 of three years each. Vacancies shall be filled for the
31 unexpired term only, in the same manner as original
32 selections are made. Members of the commission shall
33 serve without compensation, but shall be reimbursed for
34 all reasonable and necessary expenses actually incurred
35 in the performance of their official duties.

§8-24-6. County planning commission generally.

1 A county planning commission shall consist of not less
2 than five nor more than fifteen individuals, the exact
3 number to be specified in the ordinance creating such
4 commission, all of whom shall be freeholders and
5 residents of the county, who shall be qualified by
6 knowledge and experience in matters pertaining to the
7 development of the county, who shall include represen-
8 tatives of business, industry, labor and farming, and
9 who shall be appointed by the county commission. At
10 least three fifths of all of the members must have been
11 residents of the county for at least one year prior to
12 appointment. One member of the commission shall also
13 be a member of the county commission, the term of such
14 member to be coextensive with the term of office to
15 which he has been elected, unless the county commission
16 at the first regular meeting of the commission each year
17 appoints another member to serve as its representative.
18 The remaining members of the commission first
19 appointed shall serve respectively for terms of one year,
20 two years and three years, divided equally or as nearly
21 equally as possible between these terms. Thereafter,
22 members shall be appointed for terms of three years
23 each. Vacancies shall be filled by appointment by the
24 county commission for the unexpired term only.
25 Members of the commission shall serve without compen-
26 sation, but shall be reimbursed for all reasonable and
27 necessary expenses actually incurred in the perfor-
28 mance of their official duties. An individual may at the
29 same time serve as a member of a municipal planning
30 commission and as a member of a county planning
31 commission.

CHAPTER 122

(S. B. 660—By Senator Palumbo)

[Passed March 7, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article twenty-seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to urban mass transportation authorities; the solicitation and receipt of competitive sealed bids for certain defined purchases and contracts of said authorities; further limiting the expenditures covered by increasing to five thousand dollars the magnitude of affected expenditures; providing specific exceptions.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article twenty-seven, 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 27. INTERGOVERNMENTAL RELATIONS — URBAN MASS TRANSPORTATION SYSTEMS.

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

1 A purchase of or contract for all supplies, equipment
2 and materials and a contract for the construction of facil-
3 ities by any authority, when the expenditure required ex-
4 ceeds the sum of five thousand dollars, shall be based on
5 competitive sealed bids: *Provided*, That there are specifi-
6 cally excepted from the aforesaid requirement purchases
7 of and contracts for replacement parts for urban mass
8 transportation vehicles previously purchased by such au-
9 thority. Such bids shall be obtained by public notice pub-
10 lished as a Class I legal advertisement in compliance with
11 the provisions of article three, chapter fifty-nine of this
12 code, and the publication area for such publication shall be
13 the service area of such authority. Such publication shall
14 be made at least fourteen days before the final date for
15 submitting bids. In addition to such publication, the notice

16 may also be published by any other advertising me-
17 dium such authority may deem advisable, and such
18 authority may also solicit sealed bids by sending requests
19 by mail to prospective suppliers and by posting notice on
20 a bulletin board in the office of such authority.

CHAPTER 123

(S. B. 202—By Senators Whitacre, Parker and Tucker)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section three, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article one, chapter twenty of said code, all relating to abolition of the division of forestry in the department of natural resources and the creation and transfer of powers to the division of forestry in the department of agriculture; jurisdiction, powers and duties of said division; management of state forests and nurseries; transfer of regulation of ginseng; creation of state forests, powers and duties; maintenance of civil service coverage for transferred employees; certain powers, duties and services of the director of natural resources.

Be it enacted by the Legislature of West Virginia:

That section three, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article one, chapter twenty of said code be amended and reenacted, all to read as follows:

Chapter

19. Agriculture.

20. Natural Resources.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1A-3. **Division of forestry; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account.**

1 The division of forestry which existed within the

2 department of natural resources pursuant to article three,
3 chapter twenty of this code is hereby abolished. And, except
4 as otherwise provided in this article, all powers and duties
5 previously exercised by the director of natural resources
6 under subsection (13), section seven, article one and
7 article three, chapter twenty of this code, except those
8 powers and duties relating solely to wildlife areas as
9 described in section three, article three, chapter twenty of
10 this code are hereby transferred to the division of forestry
11 herein created in the department of agriculture. All books,
12 papers, maps, charts, plans, literature and other records,
13 equipment, personnel, buildings, structures, other tangible
14 properties and assets and appropriations used by or
15 assigned to the division shall be transferred with the
16 program. However, nothing in this article shall be
17 construed as to transfer the legal title to any real property
18 possessed by the department of natural resources prior to
19 the thirtieth day of June, one thousand nine hundred
20 eighty-five. The division of forestry of the department of
21 agriculture shall have within its jurisdiction and
22 supervision the state forests, other forests and woodland
23 areas, the protection of forest areas from injury and damage
24 by fire, disease, insects and other pestilences and forces the
25 management of forest areas for natural resources,
26 conservation and undeveloped recreational activities,
27 administration of the southeastern interstate forest fire
28 protection compact and other compacts and agreements
29 relating to forest management and husbandry, and the
30 administration and enforcement of laws relating to the
31 conservation, development, protection, use and enjoyment
32 of all forest land areas of the state consistent with the
33 provisions of this chapter. All moneys collected from the
34 sale of timber realized through management of the state-
35 owned forests and the sale of seedlings from the tree
36 nurseries shall be paid into the state treasury and into a
37 special account therein to be subsequently appropriated to
38 the department of agriculture for the administration of this
39 article.

40 The division of forestry of the department of agriculture
41 shall have jurisdiction to regulate the digging, possession
42 and sale of native, wild or cultivated ginseng: *Provided,*
43 That the digging season for wild, native or cultivated

44 ginseng shall begin on the fifteenth day of August and end
45 on the thirtieth day of November of each year unless
46 otherwise authorized by the director. Ginseng dealers shall:
47 (a) Obtain a ginseng dealer's permit from the director; (b)
48 keep on forms provided by the director accurate records for
49 all ginseng acquired showing the year harvested, the date
50 acquired by the dealer, county of origin, weight and
51 whether wild or cultivated; and (c) have all records and all
52 acquired ginseng inspected by the director at official
53 ginseng inspection stations for the purpose of certifying the
54 dealer's records and issuing a certificate documenting the
55 inspection and the weight of the ginseng. All ginseng dug in
56 West Virginia must be certified by the director before being
57 transported or shipped out of the state. No person shall have
58 in his possession uncertified green ginseng from the first
59 day of April through the fourteenth day of August.

60 The chief of the division shall be designated state forester
61 and shall be responsible for the execution and
62 administration of the provisions of this article as an integral
63 part of the natural resources program of the state. In
64 addition to meeting merit system or civil service
65 qualifications and requirements, the state forester shall be
66 a graduate of an accredited school of forestry with practical
67 experience and training in forestry field organization and
68 programs. All other personnel shall be transferred with the
69 current merit or civil service ratings they now hold under
70 the civil service system.

71 The state forester shall study means and methods of
72 implementing the provisions of section fifty-three, article
73 six of the Constitution of West Virginia, relating to forest
74 lands, and shall prepare and recommend to the
75 commissioner legislation thereon.

76 The commissioner of the department of agriculture shall
77 meet with the state forester and the director of the
78 department of natural resources prior to the first day of
79 June, one thousand nine hundred eighty-five, to facilitate
80 the orderly transfer of the forestry division, books, papers,
81 maps, charts, plans, literature, records, equipment,
82 buildings, structures and other tangible properties and
83 assets. The director of the department of natural resources
84 shall cooperate fully to ensure that present forestry
85 operations and programs are not discontinued prior to the

86 transfer which shall be the first day of July, one thousand
87 nine hundred eighty-five. The director of the department of
88 natural resources and the commissioner shall work out a
89 pro rata agreement for continuation of the present
90 occupancy of any buildings transferred that are occupied
91 by the department of natural resources personnel, other
92 than personnel of the forestry division and for any buildings
93 that are not transferred, but which are partially occupied
94 by personnel of the forestry division.

95 The state forester shall immediately after the transfer of
96 the division of forestry establish a system to divide the
97 forests being transferred to the department of agriculture
98 for management from the cabins, lodges and improved
99 recreational facilities which shall remain with the parks
100 division of the department of commerce.

101 In establishing the division lines, the commissioner and
102 the state forester shall cooperate fully to ensure that
103 management of improved property essential to the parks
104 division is not transferred.

105 In the event of disagreement over the placement of a
106 division line or dual occupancy of a building, the
107 disposition shall be decided by the Legislature's joint
108 committee on government and finance at a regularly
109 scheduled meeting. The transfer of management shall
110 include a transfer of all appurtenances, equipment,
111 products, inventories and forest facilities.

112 All personnel employed in the division of forestry within
113 the department of natural resources and whose
114 employment is being transferred to the department of
115 agriculture shall retain their coverage under the civil
116 service commission and civil service system, and all matters
117 relating to job classification, job tenure, salary and
118 conditions of employment shall remain in force and effect
119 from and after the first day of July, one thousand nine
120 hundred eighty-five.

121 The chief of the division of forestry in the department of
122 natural resources on the effective date of transfer to the
123 department of agriculture shall continue as, and thereafter
124 be designated as, the state forester and retain civil service
125 system coverage with such duties and responsibilities as
126 may be assigned by the director.

CHAPTER 20. NATURAL RESOURCES.**ARTICLE 1. ORGANIZATION AND ADMINISTRATION.****§20-1-7. Additional powers, duties and services of director.**

1 In addition to all other powers, duties and responsibilities
2 granted and assigned to the director in this chapter and
3 elsewhere by law, the director is hereby authorized and
4 empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the
8 conservation of the natural resources of the state which best
9 effectuates the purposes of this chapter and which makes
10 adequate provisions for the natural resources laws of the
11 state;

12 (2) Sign and execute in the name of the state by the
13 "department of natural resources" any contract or
14 agreement with the federal government or its departments
15 or agencies, subdivisions of the state, corporations,
16 associations, partnerships or individuals;

17 (3) Conduct research in improved conservation methods
18 and disseminate information matters to the residents of the
19 state;

20 (4) Conduct a continuous study and investigation of the
21 habits of wildlife, and for purposes of control and
22 protection, to classify by regulation the various species into
23 such categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and
25 method by which the various species of wildlife may be
26 taken, or chased, unless otherwise specified by this chapter;

27 (6) Hold at least six meetings each year at such time and
28 at such points within the state, as in the discretion of the
29 natural resources commission may appear to be necessary
30 and proper for the purpose of giving interested persons in
31 the various sections of the state an opportunity to be heard
32 concerning open season for their respective areas, and
33 report the results of the meetings to the natural resources
34 commission before such season and bag limits are fixed by
35 it;

36 (7) Suspend open hunting season upon any or all
37 wildlife in any or all counties of the state with the prior
38 approval of the governor in case of an emergency such as a

39 drought, forest fire hazard or epizootic disease among
40 wildlife. The suspension shall continue during the existence
41 of the emergency and until rescinded by the director.
42 Suspension, or reopening after such suspension, of open
43 seasons may be made upon twenty-four hours' notice by
44 delivery of a copy of the order of suspension or reopening to
45 the wire press agencies at the state capitol;

46 (8) Supervise the fiscal affairs and responsibilities of
47 the department;

48 (9) Designate such localities as he shall determine to be
49 necessary and desirable for the perpetuation of any species
50 of wildlife;

51 (10) Enter private lands to make surveys or inspections
52 for conservation purposes, to investigate for violations of
53 provisions of this chapter, to serve and execute warrants
54 and processes, to make arrests and to otherwise effectively
55 enforce the provisions of this chapter;

56 (11) Acquire for the state in the name of the
57 'department of natural resources' by purchase,
58 condemnation, lease or agreement, or accept or reject for
59 the state, in the name of the department of natural
60 resources, gifts, donations, contributions, bequests or
61 devises of money, security or property, both real and
62 personal, and any interest in such property, including lands
63 and waters, which he deems suitable for the following
64 purposes:

65 (a) For state forests for the purpose of growing timber,
66 demonstrating forestry, furnishing or protecting
67 watersheds or providing public recreation;

68 (b) For state parks or recreation areas for the purpose of
69 preserving scenic, aesthetic, scientific, cultural,
70 archaeological or historical values or natural wonders, or
71 providing public recreation;

72 (c) For public hunting, trapping or fishing grounds or
73 waters for the purpose of providing areas in which the
74 public may hunt, trap or fish, as permitted by the provisions
75 of this chapter, and the rules and regulations issued
76 hereunder;

77 (d) For fish hatcheries, game farms, wildlife research
78 areas and feeding stations;

79 (e) For the extension and consolidation of lands or

80 waters suitable for the above purposes by exchange of other
81 lands or waters under his supervision;

82 (f) For such other purposes as may be necessary to carry
83 out the provisions of this chapter;

84 (12) Capture, propagate, transport, sell or exchange any
85 species of wildlife as may be necessary to carry out the
86 provisions of this chapter;

87 (13) Sell, with the approval in writing of the governor,
88 timber for not less than the value thereof, as appraised by a
89 qualified appraiser appointed by the director, from all
90 lands under the jurisdiction and control of the director,
91 except those lands that are designated as state parks and
92 those in the Kanawha state forest. The appraisal shall be
93 made within a reasonable time prior to any sale, reduced to
94 writing, filed in the office of the director and shall be
95 available for public inspection. When the appraised value
96 of the timber to be sold is more than five hundred dollars,
97 the director, before making sale thereof, shall receive sealed
98 bids therefor, after notice by publication as a Class II legal
99 advertisement in compliance with the provisions of article
100 three, chapter fifty-nine of this code, and the publication
101 area for such publication shall be each county in which the
102 timber is located. The timber so advertised shall be sold at
103 not less than the appraised value to the highest responsible
104 bidder, who shall give bond for the proper performance of
105 the sales contract as the director shall designate; but the
106 director shall have the right to reject any and all bids and to
107 readvertise for bids. If the foregoing provisions of this
108 section have been complied with, and no bid equal to or in
109 excess of the appraised value of the timber is received, the
110 director may, at any time, during a period of six months
111 after the opening of the bids, sell the timber in such manner
112 as he deems appropriate, but the sale price shall not be less
113 than the appraised value of the timber advertised. No
114 contract for sale of timber made pursuant to this section
115 shall extend for a period of more than ten years. And all
116 contracts heretofore entered into by the state for the sale of
117 timber shall not be validated by this section if the same be
118 otherwise invalid. The proceeds arising from the sale of the
119 timber so sold, shall be paid to the treasurer of the state of
120 West Virginia, and shall be credited to the department and
121 used exclusively for the purposes of this chapter: *Provided,*

122 That nothing contained herein shall prohibit the sale of
123 timber which otherwise would be removed from rights-of-
124 way necessary for and strictly incidental to the extraction
125 of minerals;

126 (14) Sell or lease, with the approval in writing of the
127 governor, coal, oil, gas, sand, gravel and any other minerals
128 that may be found in the lands under the jurisdiction and
129 control of the director, except those lands that are
130 designated as state parks. The director, before making sale
131 or lease thereof, shall receive sealed bids therefor, after
132 notice by publication as a Class II legal advertisement in
133 compliance with the provisions of article three, chapter
134 fifty-nine of this code, and the publication area for such
135 publication shall be each county in which such lands are
136 located. The minerals so advertised shall be sold or leased to
137 the highest responsible bidder, who shall give bond for the
138 proper performance of the sales contract or lease as the
139 director shall designate; but the director shall have the
140 right to reject any and all bids and to readvertise for bids.
141 The proceeds arising from any such sale or lease shall be
142 paid to the treasurer of the state of West Virginia and shall
143 be credited to the department and used exclusively for the
144 purposes of this chapter;

145 (15) Exercise the powers granted by this chapter [for the
146 protection of forests, and regulate fires and smoking in the
147 woods or in their proximity at such times and in such
148 localities as may be necessary to reduce the danger of forest
149 fires; .

150 (16) Cooperate with departments and agencies of state,
151 local and federal governments in the conservation of
152 natural resources and the beautification of the state;

153 (17) Report to the governor each year all information
154 relative to the operation and functions of his department
155 and he shall make such other reports and recommendations
156 as may be required by the governor, including an annual
157 financial report covering all receipts and disbursements of
158 the department for each fiscal year, and he shall deliver
159 such report to the governor on or before the first day of
160 December next after the end of the fiscal year so covered. A
161 copy of such report shall be delivered to each house of the
162 Legislature when convened in January next following;

163 (18) Keep a complete and accurate record of all

164 proceedings, record and file all bonds and contracts taken
165 or entered into, and assume responsibility for the custody
166 and preservation of all papers and documents pertaining to
167 his office, except as otherwise provided by law;

168 (19) Offer and pay, in his discretion, rewards for
169 information respecting the violation, or for the
170 apprehension and conviction of any violators, of any of the
171 provisions of this chapter;

172 (20) Require such reports as he may deem to be
173 necessary from any person issued a license or permit under
174 the provisions of this chapter, but no person shall be
175 required to disclose secret processes or confidential data of
176 competitive significance;

177 (21) Purchase as provided by law all equipment
178 necessary for the conduct of his department;

179 (22) Conduct and encourage research designed to
180 further new and more extensive uses of the natural
181 resources of this state and to publicize the findings of such
182 research;

183 (23) Encourage and cooperate with other public and
184 private organizations or groups in their efforts to publicize
185 the attractions of the state;

186 (24) Accept and expend, without the necessity of
187 appropriation by the Legislature, any gift or grant of money
188 made to the department for any and all purposes specified
189 in this chapter, and he shall account for and report on all
190 such receipts and expenditures to the governor;

191 (25) Cooperate with the state historian and other
192 appropriate state agencies in conducting research with
193 reference to the establishment of state parks and
194 monuments of historic, scenic and recreational value, and
195 to take such steps as may be necessary in establishing such
196 monuments or parks as he deems advisable;

197 (26) Maintain in his office at all times, properly indexed
198 by subject matter, and also, in chronological sequence, all
199 rules and regulations made or issued under the authority of
200 this chapter. Such records shall be available for public
201 inspection on all business days during the business hours of
202 working days;

203 (27) Delegate the powers and duties of his office, except
204 the power to execute contracts, to appointees and
205 employees of the department, who shall act under the

206 direction and supervision of the director and for whose acts
207 he shall be responsible;

208 (28) Conduct schools, institutions and other
209 educational programs, apart from or in cooperation with
210 other governmental agencies, for instruction and training
211 in all phases of the natural resources programs of the state;

212 (29) Authorize the payment of all or any part of the
213 reasonable expenses incurred by an employee of the
214 department in moving his household furniture and effects
215 as a result of a reassignment of the employee: *Provided*,
216 That no part of the moving expenses of any one such
217 employee shall be paid more frequently than once in twelve
218 months; and

219 (30) Promulgate rules and regulations, in accordance
220 with the provisions of chapter twenty-nine-a of this code, to
221 implement and make effective the powers and duties vested
222 in him by the provisions of this chapter and take such other
223 steps as may be necessary in his discretion for the proper
224 and effective enforcement of the provisions of this chapter:
225 *Provided*, That all rules and regulations relating to articles
226 five and five-a of this chapter shall be promulgated by the
227 water resources board.

CHAPTER 124

(S. B. 238—By Senator R. Williams)

[Passed March 6, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the water resources division within the department of natural resources; establishing game and fish, forestry, law enforcement and reclamation divisions within the department; granting to the director power to appoint chief of each division and to allocate functions of divisions in general.

Be it enacted by the Legislature of West Virginia:

That section fourteen, 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.

§20-1-14. Divisions within department.

1 Divisions of game and fish, of forestry, of water
2 resources, of law enforcement and of reclamation are
3 hereby created and established within the department.
4 Subject to provisions of law, the director shall allocate
5 the functions and services of the department to the
6 divisions, offices and activities thereof and may from
7 time to time establish and abolish other divisions, offices
8 and activities within the department in order to carry
9 out fully and in an orderly manner the powers, duties
10 and responsibilities of his office as director. The director
11 shall select and designate a competent and qualified
12 person to be chief of each division. The chief shall be
13 the principal administrative officer of his division and
14 shall be accountable and responsible for the orderly and
15 efficient performance of the duties, functions and
16 services thereof.

17 After having conducted a performance audit through
18 its joint committee on government operations, pursuant
19 to section nine, article ten, chapter four of this code, the
20 Legislature hereby finds and declares that the water
21 resources division of the department of natural resour-
22 ces should be continued and reestablished. Accordingly,
23 notwithstanding the provisions of section four, article
24 ten, chapter four of this code, the water resources
25 division of the department of natural resources shall
26 continue to exist until the first day of July, one thousand
27 nine hundred ninety-two.



CHAPTER 125

(H. B. 2152—By Delegate Jordan and Delegate Damron)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to wildlife resources, interfering with hunters, trappers and fishers, civil liability, criminal penalties, second offense.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-2a. Interference with hunters, trappers and fishermen.

1 A person may not willfully obstruct or impede the
2 participation of any individual in the lawful activity of
3 hunting, fishing or trapping. Any person violating the
4 provisions of this section shall be guilty of a misdemea-
5 nor, and, upon conviction thereof, shall be fined not less
6 than one hundred dollars nor more than five hundred
7 dollars or imprisoned in the county jail for not less than
8 ten days nor more than one hundred days or both fined
9 and imprisoned. Also, any person convicted of a
10 subsequent violation of this section shall be fined not
11 more than one thousand dollars or imprisoned in the
12 county jail not more than one year or both fined and
13 imprisoned. For the purpose of this section a subsequent
14 violation is one which has occurred within two years of
15 any prior violation of this section and which arises out
16 of a separate set of circumstances. Any person convicted
17 of any violation of this section shall be liable to the
18 person, whom they interfered with, for all costs and
19 damages resulting therefrom and if such offender holds
20 a West Virginia hunting, fishing or trapping license at
21 the time of conviction, such license shall be revoked.

CHAPTER 126

(S. B. 119—By Senator Loehr)

AN ACT to amend and reenact section forty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hunting and fishing licenses for nonresidents; increase of fee for Class E and Class EE nonresident hunting license.

Be it enacted by the Legislature of West Virginia:

That section forty-three, 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 nonresidents.

1 A Class E license shall be a nonresident hunting li-
2 cense and shall entitle the licensee to hunt all game in
3 all counties of the state, except when other licenses or
4 permits are required. It shall be issued only to citizens of
5 the United States and to unnaturalized persons who
6 possess the permit referred to in section twenty-nine of
7 this article who are not residents of this state. The fee
8 therefor shall be seventy dollars.

9 A Class EE license shall be a nonresident bear hunting
10 license and shall entitle the licensee to hunt bear in all
11 counties of the state on and after the first day of July,
12 one thousand nine hundred eighty-two. It shall be issued
13 only to citizens of the United States and to unnaturalized
14 persons who possess the permit referred to in section twen-
15 ty-nine of this article who are not residents of this state.
16 The fee therefor shall be one hundred twenty dollars.

17 A Class F license shall be a nonresident fishing license
18 and shall entitle the licensee to fish for all fish, except
19 trout, in all counties of the state. It shall be issued only
20 to citizens of the United States and to unnaturalized per-
21 sons who possess the permit referred to in section twenty-
22 nine of this article who are not residents of this state. The
23 fee therefor shall be twenty dollars.

24 Trout fishing is not permitted with a Class F license
25 unless such license has affixed thereto an appropriate
26 trout stamp as prescribed by the department of natural
27 resources.

28 A Class G license shall be a family fishing license and
29 shall entitle the licensee and members of his family to
30 fish within the territorial limits of state parks and state
31 forests and in the waters of streams bounding same, for
32 a distance of not to exceed one hundred yards from the
33 exterior boundary of any state park or state forest, for
34 a period not to exceed one week. It may be issued to any
35 adult resident or nonresident who is temporarily residing
36 in any state park or forest as tenant or lessee of the state.
37 The fee therefor shall be six dollars for the head of the
38 family, plus one dollar additional for each member of his
39 family to whom the privilege of such license are ex-
40 tended. Class G licenses may be issued in such manner
41 and under such regulations as the director may see fit to
42 prescribe.

43 Trout fishing is not permitted with a Class G license un-
44 less such license has affixed thereto an appropriate trout
45 stamp as prescribed by the department of natural re-
46 sources. The trout stamp must be affixed to the license
47 of the head of the family only.

48 A Class H license shall be a nonresident small game
49 hunting license and shall entitle the licensee to hunt
50 small game in all counties of the state for a period of six
51 days beginning with the date it is issued. It shall be issued
52 only to citizens of the United States who are not residents
53 of this state. The fee therefor shall be ten dollars. As
54 used in this section, "small game" means all game except
55 bear, deer, wild turkey and wild boar.

CHAPTER 127

(Com. Sub. for H. B. 1471—By Delegate Love)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six-h, relating to the creation of a Class S

nonresident trapping license; license issued in counties authorized by the director; fee; and requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46h. Class S nonresident trapping license.

1 A Class S license shall be a nonresident trapping
2 license, and shall entitle the licensee to trap legal
3 furbearing animals during the designated trapping
4 season in those counties of the state as authorized by the
5 director, except as prohibited by rules or regulations of
6 the director.

7 A Class S license shall be issued only to a nonresident
8 holding a valid Class E nonresident hunting license and
9 who is a citizen of the United States or unnaturalized
10 persons possessing the permit required by section
11 twenty-nine of this article.

12 The fee for a Class S license shall be twenty-five
13 dollars.

CHAPTER 128

(Com. Sub. for H. B. 1526—By Delegate Garrett and Delegate J. Martin)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixty-three, relating to the establishment of a state migratory waterfowl stamp; definitions; license fee; and dedication of funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-63. Migratory waterfowl stamp; definitions; license fee; dedication of funds.

1 (a) As used in this section:

2 (1) "Migratory waterfowl" means a wild goose, grant
3 or wild duck.

4 (2) "Department" means the department of natural
5 resources.

6 (3) "Stamp" means the migratory waterfowl conserva-
7 tion stamp provided by this section.

8 (b) Except as otherwise provided herein, no person
9 may hunt or take any migratory waterfowl within this
10 state without first procuring a migratory waterfowl
11 conservation stamp as provided by this section. Such
12 stamp must be in the possession of every person when
13 hunting or taking any migratory waterfowl. Each stamp
14 shall be validated by the signature of the licensee
15 written across the face of such stamp. Such stamp shall
16 expire annually on the same date each year that all
17 hunting licenses expire. Any person who is exempt from
18 payment or charge for a hunting license is also exempt
19 from the fee imposed by this section. Any person who
20 is under the age of sixteen years is exempt from the
21 requirements of this section.

22 (c) A stamp shall be issued to each hunting license
23 applicant upon request and payment of a fee of five
24 dollars, together with any license agent fees imposed by
25 this article.

26 (d) All fees collected from the sale of state migratory
27 waterfowl stamps shall be appropriated to the depart-
28 ment for the following purposes:

29 (1) Fifty percent for projects approved by the depart-
30 ment for the purpose of attracting waterfowl and
31 improving public migratory waterfowl areas within the
32 state, but none of the moneys spent within the state may
33 be used for administrative expenses; and

34 (2) Fifty percent will be expended by the department
35 for the development of waterfowl propagation areas
36 within the Dominion of Canada which specifically
37 provide waterfowl for the Atlantic flyway. Before
38 expending any funds under the provisions of this
39 subsection, the department shall obtain evidence that
40 the project is acceptable to the appropriate governmen-
41 tal agency of the Dominion of Canada or of one of its
42 provinces having jurisdiction over the lands and waters
43 affected by the project and shall consult those agencies
44 before allocating funds. The department may enter into
45 an agreement or agreements with an appropriate
46 nonprofit organization or organizations to carry out the
47 provisions of this subdivision.

48 (e) The department has exclusive production rights
49 for the migratory waterfowl conservation stamp and is
50 authorized to adopt a policy for the annual selection of
51 an appropriate design for the stamp and to have the
52 stamp produced for sale. The policy may include
53 ownership rights of the original art selected and
54 arrangements for the reproduction, distribution and
55 marketing of the prints of the design of the stamp, for
56 the disposition of the stamps after their year of issuance
57 and for the lawful disposition of the resulting revenues.
58 Such revenues shall be deposited in the state treasury
59 and credited to the department and shall be used and
60 paid out upon order of the director for the conservation
61 of migratory waterfowl and other wildlife: *Provided,*
62 That no moneys generated hereby shall be used for
63 purposes for condemnation of any land in this state.

64 The 1987 migratory waterfowl conservation stamp
65 shall be considered the only official "first of state"
66 migratory waterfowl stamp issued for the state of West
67 Virginia.

CHAPTER 129**(Com. Sub. for H. B. 1701—By Delegate Springston and Delegate Love)**

[Passed March 8, 1986; in effect January 1, 1987. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating to the creation of a wildlife endowment fund in the department of natural resources; purpose; board created; composition of board; source of fund assets; status of fund; expenditures from fund; accumulation of investment income; how expenditures made; fund exclusive of other receipts and appropriations; dissolution of department; expenditure of funds for specific and general purposes; lifetime hunting, fishing and trapping licenses created; and privileges of lifetime licenses.

Be it enacted by the Legislature of West Virginia:

That chapter twenty 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-b, to read as follows:

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2b-1. Purpose.

§20-2b-2. Board created; composition.

§20-2b-3. Source of fund assets.

§20-2b-4. Status of fund; expenditures from the fund.

§20-2b-5. Accumulation of investment income; how expenditures made; fund exclusive of other receipts and appropriations; dissolution of department.

§20-2b-6. Expenditure of funds for specific and general purposes.

§20-2b-7. Lifetime hunting, fishing and trapping licenses created.

§20-2b-8. Privileges of lifetime licenses.

§20-2B-1. Purpose.

- 1 Recognizing the inestimable importance to the state
- 2 and its people of conserving the wildlife resources of
- 3 West Virginia, and for the purpose of providing the
- 4 opportunity for citizens and residents of the state to
- 5 invest in the future of its wildlife resources, there is

6 created the West Virginia wildlife endowment fund, the
7 interest and principal of which shall be used only for
8 the purpose of supporting wildlife conservation pro-
9 grams of the state in accordance with this section.

§20-2B-2. Board created; composition.

1 There is hereby created the board of trustees of the
2 wildlife endowment fund of the department of natural
3 resources, with full authority over the administration of
4 the wildlife endowment fund, whose chairman shall be
5 the director of the department of natural resources and
6 whose members shall be the executive secretary of the
7 department, the departmental fiscal officer, the chief of
8 the wildlife resources division, and the chief of the law
9 enforcement division and two citizen members, to be
10 appointed by the Governor. The actual expenses of such
11 citizen members, incurred in the performance of their
12 duties hereunder, shall be payable from funds of the
13 department. The state treasurer shall be the custodian
14 of the wildlife endowment fund and shall invest its
15 assets in accordance with the provisions of section nine,
16 article six, chapter twelve of this code.

§20-2B-3. Source of fund assets.

1 The assets of the wildlife endowment fund shall be
2 derived from the following:

3 (a) The proceeds from the sale of lifetime hunting and
4 fishing licenses under the provisions of section seven of
5 this article; and

6 (b) The proceeds of any gifts, grants, contributions or
7 other moneys accruing to the state which are specifically
8 designated for inclusion in the fund.

§20-2B-4. Status of fund; expenditures from the fund.

1 The wildlife endowment fund is declared to constitute
2 a special fund within the department, to be expendable
3 only after legislative approval, with the following
4 limitations and restrictions on expenditures from the
5 funds:

6 (a) The income received and accruing from the
7 investments of the wildlife endowment fund shall be

8 spent only in furthering the conservation and manage-
9 ment of wildlife resources in the state;

10 (b) The income received and accruing from the
11 investments of the wildlife endowment fund shall be
12 distributed among divisions within the department as
13 prescribed by section six of this article;

14 (c) No expenditure or disbursement shall be made
15 from the principal of the wildlife endowment fund
16 except at such time as the income received and accruing
17 from the investments of the wildlife endowment fund is
18 expended or disbursed for purposes other than the
19 conservation and management of wildlife resources;

20 (d) Any disbursement of the principal of the wildlife
21 endowment fund shall be made in the same manner as
22 that prescribed for investment income in section six of
23 this article; and

24 (e) Any expenditure or disbursement from the wild-
25 life endowment fund must result in benefits to the
26 department of natural resources and must be spent only
27 for the conservation and management of wildlife
28 resources.

**§20-2B-5. Accumulation of investment income; how
expenditures made; fund exclusive of other
receipts and appropriations; dissolution of
department.**

1 (a) The board of trustees of the wildlife endowment
2 fund may accumulate investment income of the fund
3 within the fund until the income, in the sole judgment
4 of the trustees, can provide a significant supplement to
5 the budget of the department of natural resources. After
6 that time the trustees, in their sole discretion and
7 authority, may direct expenditures from the income of
8 the fund to further the conservation of wildlife
9 resources.

10 (b) Expenditure of the income derived from the
11 wildlife endowment fund shall be made through the
12 state budget accounts of the department of natural
13 resources. The wildlife endowment fund is subject to the
14 oversight of the state auditor.

15 (c) The wildlife endowment fund and the income
16 derived therefrom shall not take the place of any other
17 receipts or appropriations accruing to the department
18 of natural resources, or any part thereof, but any portion
19 of the income of the wildlife endowment fund shall be
20 used to supplement other income of and appropriations
21 to the department of natural resources to the end that
22 the department may improve and increase its services
23 to the people of the state and the conservation of their
24 wildlife resources.

25 (d) In the event of the future dissolution of the
26 department of natural resources, such state agency as
27 shall succeed to its statutory authority to conserve the
28 wildlife resources of the state shall, ex officio, assume
29 the trusteeship of the wildlife endowment fund and shall
30 be bound by all the limitations and restrictions placed
31 by this section on expenditures from the fund. No appeal
32 or modification of this section shall alter the fundamen-
33 tal purposes to which the wildlife endowment fund may
34 be applied. No future dissolution of the department of
35 natural resources shall invalidate any lifetime license
36 issued in accordance with section seven of this article.

§20-2B-6. Expenditure of funds for specific and general purposes.

1 In accordance with the intent of sections thirty-four
2 and forty-six-c, article two of this chapter and pursuant
3 to sections three and four of this article, income
4 accruing from the investments of the wildlife endow-
5 ment fund shall be distributed in the following manner:

6 (a) Income accruing from the investment of moneys
7 resulting from the sale of Class O-L license shall be
8 distributed and disbursed in the same manner as
9 revenues accruing from the sale of Class O licenses as
10 provided for in section forty-six-c, article two of this
11 chapter.

12 (b) Income accruing from the investment of any
13 portion of the principal of the wildlife endowment fund
14 which, at the time of its deposit into the fund, is
15 specifically designated for the activities of a particular
16 division within the department, shall accrue solely to

17 that division within the department; and

18 (c) All other income accruing from the investments of
19 the wildlife endowment fund shall be distributed within
20 the department in the same manner as provided for in
21 section thirty-four, article two of this chapter.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

1 Pursuant to section three of this article the following
2 lifetime hunting, trapping and fishing licenses are
3 hereby created and, for the lifetime of the licensee, shall
4 serve in lieu of the equivalent annual license;

5 (a) A Class AB-L lifetime resident combination
6 statewide hunting, fishing and trapping license, the fee
7 for which shall be three hundred dollars;

8 (b) A Class A-L lifetime resident statewide hunting
9 and trapping license, the fee for which shall be two
10 hundred dollars;

11 (c) A Class B-L lifetime resident statewide fishing
12 license, the fee for which shall be two hundred dollars;
13 and

14 (d) A Class O-L lifetime resident trout fishing license,
15 the fee for which shall be one hundred dollars.

§20-2B-8. Privileges of lifetime licensees.

1 Pursuant to section seven of this article, lifetime
2 licensees shall be entitled to the same privileges and
3 subject to the same restrictions as licensees possessing
4 the equivalent annual license with the following
5 exceptions:

6 (a) Class AB-L, A-L, B-L and O-L licenses shall be
7 valid for the lifetime of the licensee;

8 (b) A Class O-L lifetime resident trout fishing license
9 shall be issued only to residents of the state and shall
10 be valid only when accompanied by a Class AB-L, B-
11 L, AB or B license; and

12 (c) Class AB-L, A-L and B-L licenses shall include all
13 of the privileges of a Class I national forest license as

14 described in section forty-four-a, article two of this
15 chapter.

CHAPTER 130

(Com. Sub. for S. B. 393—By Senators Tucker and Whitacre)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the water resources board; continuing and reestablishing the water resources board; composition and organization; appointment, qualification, terms, oaths, removal, compensation and expenses of members; others to assist board and division; quorum; meetings; records; and hiring of secretary, scientific and clerical assistants.

Be it enacted by the Legislature of West Virginia:

That section three, article five, 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 5. WATER RESOURCES.

§20-5-3. Water resources board created; continuations; composition and organization; appointment, qualifications, terms, oaths, removal, compensation and expenses of members; others to assist board and division; vacancies; quorum; meetings; records.

1 (a) The state water resources board heretofore created
2 and established as successor to the state water commis-
3 sion and the state water resources commission is hereby
4 abolished. A new state water resources board is hereby
5 created and established as a public corporation. As such,
6 the board may sue and be sued, plead and be impleaded,
7 contract and be contracted with, and shall have and use
8 a common seal.

9 (b) After having conducted a performance audit
10 through its joint committee on government operations,

11 pursuant to section nine, article ten, chapter four of this
12 code, the Legislature hereby finds and declares that the
13 state water resources board should be continued and
14 reestablished. Accordingly, notwithstanding the provi-
15 sions of section four, article ten, chapter four of this code,
16 the state water resources board shall continue to exist
17 until the first day of July, one thousand nine hundred
18 ninety-two.

19 (c) The board shall be composed of five members who
20 shall be appointed by the governor with the advice and
21 consent of the Senate. Not more than three members of
22 the board shall be of the same political party. Individuals
23 appointed to the board shall be persons who by reasons
24 of previous training and experience are knowledgeable
25 in the husbandry of the state's water resources and with
26 at least one member with experience in industrial pollu-
27 tion control. No member of the board shall receive or,
28 during the two years next preceding the member of the
29 board's appointment, shall have received a "significant
30 portion of the member of the board's income" directly or
31 indirectly from a permit holder or an applicant for a
32 permit issued under any of the provisions of this chapter.
33 For the purposes of this subsection: (1) The term "sig-
34 nificant portion of the member of the board's income"
35 shall mean ten percent of gross personal income for a
36 calendar year, except that it shall mean fifty percent of
37 gross personal income for a calendar year if the recipient
38 is over sixty years of age and is receiving such portion
39 pursuant to retirement, a pension or similar arrange-
40 ment; (2) the term "income" includes retirement benefits,
41 consultant fees and stock dividends; (3) income is not
42 received "directly or indirectly" from "permit holders" or
43 "applicants for a permit" where it is derived from mutual-
44 fund payments or from other diversified investments
45 with respect to which the recipient does not know the
46 identity of the primary sources of income; and (4) the
47 terms "permit holders" and "applicants for a permit"
48 shall not include any university or college operated by
49 this state or political subdivision of this state.

50 (d) The members of the board shall be appointed for

51 overlapping terms of five years, except that the original
52 appointments shall be for terms of one, two, three, four
53 and five years, respectively. Any member whose term
54 expires may be reappointed by the governor. At its organ-
55 izational meeting, one member of the board shall be
56 selected chairman to serve as chairman at the will and
57 pleasure of the members of the board. Members of the
58 board shall, before performing any duty, take and sub-
59 scribe to the oath required by section five, article four
60 of the Constitution of West Virginia. Members of the
61 board may be removed only for the same causes and in
62 like manner as elective state officers. Any vacancy in the
63 office of a member of the board shall be filled by appoint-
64 ment by the governor for the unexpired term of the
65 member whose office shall be vacant. Each vacancy oc-
66 ccurring in the office of a member of the board shall be
67 filled by appointment within sixty days after such vacancy
68 occurs. Each member of the board shall be paid as com-
69 pensation for his work as such member from funds
70 appropriated for such purposes, seventy-five dollars per
71 day when actually engaged in the performance of work
72 as a board member. In addition to such compensation,
73 each member of the board shall be reimbursed for all
74 reasonable and necessary expenses actually incurred in
75 the performance of the board member's duties. The
76 director of the division of sanitary engineering of the
77 state department of health shall perform such services as
78 the board and the chief of the division of water resources
79 may request in connection with the discharge of their
80 duties, and the director shall be reimbursed, out of
81 moneys appropriated for such purposes, all sums which
82 the director necessarily shall expend in the performance
83 of such service. Nothing contained in this article or in
84 article five-a of this chapter, however, shall be construed
85 to limit or interfere with the power of the state depart-
86 ment of health to select, employ and direct the director of
87 the division of sanitary engineering of said department,
88 or any employee thereof who in any way may perform
89 any services for the board or the division of water
90 resources. The college of engineering at West Virginia
91 University and the schools and departments of engineer-

92 ing at other institutions of higher education operated by
93 this state, under the direction of the dean or other head
94 thereof, shall, insofar as they can, without interfering
95 with their usual and regular activities, aid and assist the
96 board and the division of water resources in the study
97 and research of questions connected with water pollution
98 and the control and reduction thereof in accordance with
99 the provisions of article five-a of this chapter. Such dean
100 or other head shall be reimbursed, out of moneys appro-
101 priated for such purposes, all sums which such dean
102 necessarily shall expend in the performance of any ser-
103 vices such dean may render to the board and the division
104 under the provisions hereof.

105 A majority of the board shall constitute a quorum for
106 the transaction of business. The board shall meet at such
107 times and places as it may determine and shall meet on
108 call of the chairman. It shall be the duty of the chairman
109 to call a meeting of the board on the written request of
110 three members thereof. The board shall keep an accurate
111 record of all of its proceedings and maintain such board
112 records and make certificates thereof or therefrom as may
113 be required by law. The board may employ a secretary
114 and necessary scientific and clerical assistance.

CHAPTER 131

(Com. Sub. for H. B. 1685—By Delegate E. Martin)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, eight, twelve, fourteen and twenty-two, article sixteen-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia pesticide use and application act; procedure for renewals; increasing civil penalties; changing criminal penalties; authorizing commissioner of agriculture to promulgate regulations permitting consent agreements or negotiated settlements for civil penalties; and prohibiting municipalities and counties from enacting

laws or ordinances regulating pesticide use and application.

Be it enacted by the Legislature of West Virginia:

That sections two, eight, twelve, fourteen and twenty-two, article sixteen-b, 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 16B. WEST VIRGINIA PESTICIDE USE AND APPLICATION ACT.

§19-16B-2. Declaration of purpose; legislative findings.

§19-16B-8. Licensed pesticide application business license.

§19-16B-12. License renewals.

§19-16B-14. Denial, suspension or revocation of license, permit or certification; civil penalty.

§19-16B-22. Penalties.

§19-16B-2. Declaration of purpose; legislative findings.

1 The purpose of this article is to regulate in the public
2 interest the use and application of pesticides. The
3 Legislature finds that pesticides perform a vital
4 function in modern society because they control insects,
5 fungi, nematodes, rodents, and other pests which ravage
6 and destroy our food and fiber, which serve as vectors
7 of disease, and which otherwise constitute a nuisance in
8 the environment or the home; they control weeds which
9 compete in the production of foods and fiber and which
10 otherwise are unwanted elements in our environment;
11 and they regulate plant growth to enhance both the
12 quality and quantity of our food and fiber and to
13 facilitate its harvest. Pesticides, however, may be
14 rendered ineffective, may cause injury to man or may
15 cause unreasonable adverse effects on the environment
16 if not properly used. They may injure man or animals
17 either by direct poisoning or by the gradual accumula-
18 tion of pesticide residues in their tissues. Crops or other
19 plants may be affected by their improper use. The
20 drifting or washing of pesticides into streams or lakes
21 may cause appreciable damage to aquatic life. And, a
22 pesticide applied for the purpose of killing pests in a
23 crop, which is not itself injured by the pesticide, may
24 drift and injure other crops or nontarget organisms with

25 which it comes in contact. Therefore, it is deemed
26 necessary to provide for regulation of the use and
27 application of such pesticides.

28 Nothing in this article shall be construed as permit-
29 ting municipalities or counties to enact laws or ordinan-
30 ces regarding the regulation of pesticide use and
31 application.

§19-16B-8. Licensed pesticide application business license.

1 (a) No person shall engage in the business of applying
2 pesticides to the lands of another at any time without
3 a licensed pesticide application business license issued
4 by the commissioner. The commissioner shall require an
5 annual fee of fifty dollars for each licensed pesticide
6 application business license issued.

7 (b) Application for a licensed pesticide application
8 business license shall be made in writing to the
9 commissioner on forms approved or supplied by the
10 commissioner. Each application for a license shall
11 contain information regarding the applicant's qualifica-
12 tions and proposed operations, license classification or
13 classifications the applicant is applying for and shall
14 include the following:

15 (1) The full name of the person applying for the
16 license;

17 (2) If different than (1) the full name of the individual
18 qualifying under subsection (c) of this section;

19 (3) If the applicant is a person other than an individ-
20 ual, the full name of each member of the firm or
21 partnership, or the names of the officers of the associ-
22 ation, corporation or group;

23 (4) The principal business address of the applicant in
24 the state and elsewhere;

25 (5) The address of each branch office or suboffice
26 from which the business of applying pesticides is carried
27 on. Each suboffice shall be licensed;

28 (6) Nonresidents applying for a licensed pesticide

29 application business license in any separate classifica-
30 tion under this article to operate in this state shall file
31 a written power of attorney designating the secretary of
32 state as the agent of such nonresident upon whom
33 service of process may be had in the event of any suit
34 against said nonresident person, and such power of
35 attorney shall be so prepared and in such form as to
36 render effective the jurisdiction of the courts of this
37 state over such nonresident applicant, except that any
38 such nonresident who has a duly appointed resident
39 agent upon whom process may be served as provided by
40 law shall not be required to designate the secretary of
41 state as such agent. The commissioner shall be furnished
42 with a copy of such designation of the secretary of state
43 or of a resident agent, such copy to be duly certified by
44 the secretary of state;

45 (7) The name and address of each certified commer-
46 cial applicator applying pesticides or supervising the
47 application of pesticides for the licensed pesticide
48 application business;

49 (8) State tax number; and

50 (9) Any other necessary information prescribed by the
51 commissioner.

52 (c) The commissioner shall not issue a licensed
53 pesticide application business license until the owner,
54 manager, partner or corporate officer is qualified by
55 passing an examination to demonstrate to the commis-
56 sioner his knowledge of the state and federal pesticide
57 laws, safe use and storage of pesticides and the bases
58 of the work to be done under the classification or
59 classifications for which application for license is being
60 made.

61 (d) If the commissioner finds the applicant qualified
62 to apply pesticides in the classifications the applicant
63 has applied for and if the applicant files the financial
64 security required under section fifteen of this article,
65 and if the applicant applying for a license to engage in
66 aerial application of pesticides has met all of the
67 requirements of the federal aviation agency, the
68 aeronautics commission of this state, and any other

69 applicable federal or state laws or regulations to operate
70 the equipment described in the application, the commis-
71 sioner shall issue a licensed pesticide application
72 business license. The license so issued shall expire at the
73 end of the calendar year of issue, unless it has been
74 revoked or suspended prior thereto by the commissioner
75 for cause, except when the financial security required
76 under section fifteen of this article is dated to expire at
77 an earlier date, in which case said license shall be dated
78 to expire upon expiration date of said financial security.
79 The commissioner may limit the license of the applicant
80 to certain classifications of pest control work, or to
81 certain areas, or to certain types of equipment, or to
82 certain specific pesticides, if the applicant is only so
83 qualified. If a license is not issued as applied for, the
84 commissioner shall inform the applicant in writing of
85 the reasons therefor.

86 (e) All persons applying pesticides as a licensed
87 pesticide application business, whether or not they are
88 applying restricted use pesticides, must be certified as
89 a commercial applicator in the appropriate category or
90 subcategory, or must be under the direct supervision of
91 a certified commercial applicator.

§19-16B-12. License renewals.

1 Any person holding a current valid license, permit or
2 certification may renew such license, permit or certifi-
3 cation for the next year without taking another exam-
4 ination, except as is provided in subsection (d), section
5 eight, unless the license, permit or certification is not
6 renewed by the first day of April of any year in which
7 case such licensee, permittee or certificate holder shall
8 be required to take another examination: *Provided*, That
9 no person holding an expired license, permit or certi-
10 fication shall engage in any activity for which such
11 license, permit or certification is required until such
12 license, permit or certification has been renewed.

**§19-16B-14. Denial, suspension or revocation of license,
permit or certification; civil penalty.**

1 The commissioner shall notify any licensee of viola-
2 tions of this article by the licensee, and after inquiry,

3 including opportunity for a hearing, may deny, suspend,
4 revoke or modify any provision of any license, permit or
5 certification issued under this article or he may impose
6 a civil penalty as provided in section twenty-two of this
7 article, if he finds that the applicant or the holder of a
8 license, permit or certification has committed any of the
9 following acts, each of which is declared to be a violation
10 of this article:

11 (1) Made false or fraudulent claims through any
12 media misrepresenting the effect of pesticides or
13 methods to be utilized;

14 (2) Made a pesticide use recommendation or applica-
15 tion inconsistent with the labeling as registered by the
16 United States environmental protection agency or
17 commissioners' state registration for that pesticide, or in
18 violation of the United States environmental protection
19 agency or commissioners' state restrictions for the use
20 of that pesticide;

21 (3) Applied unknown ineffective or improper
22 pesticides;

23 (4) Operated faulty or unsafe equipment;

24 (5) Operated in a faulty, carelesss or negligent
25 manner;

26 (6) Neglected or, after notice, refused to comply with
27 the provisions of this article, the rules adopted here-
28 under, or of any lawful order of the commissioner;

29 (7) Refused or neglected to keep and maintain the
30 records required by this article, or to make reports
31 when and as required;

32 (8) Made false or fraudulent records, invoices or
33 reports;

34 (9) Engaged in the business of applying a pesticide on
35 the lands of another without having a licensed pesticide
36 application business license;

37 (10) Engaged in the business of applying a restricted
38 use pesticide on the lands of another without having a
39 licensed certified applicator in direct supervision;

40 (11) Used fraud or misrepresentation in making an
41 application for, or renewal of, a license, permit or
42 certification;

43 (12) Refused or neglected to comply with any limita-
44 tions or restrictions on or in a duly issued license, permit
45 or certification;

46 (13) Aided or abetted a licensed or an unlicensed
47 person to evade the provisions of this article or allowed
48 one's license, permit or certification to be used by
49 another person;

50 (14) Made false or misleading statements during or
51 after an inspection concerning any infestation or
52 infection of pests found on land;

53 (15) Impersonated any federal, state, county or city
54 inspector or official;

55 (16) Advertised as proof of professionalism in secur-
56 ing business that the licensee is certified or licensed by
57 the department of agriculture or the commissioner of
58 agriculture; or

59 (17) Failed to comply with any provision of this article
60 or any regulation issued thereunder.

§19-16B-22. Penalties.

1 (a) Any person violating any provisions of this article
2 or regulations adopted hereunder is guilty of a misde-
3 meanor, and, upon conviction thereof, shall be fined not
4 less than one hundred dollars nor more than five
5 hundred dollars for the first offense, and for the second
6 offense, shall be fined not less than five hundred nor
7 more than one thousand dollars, or imprisoned in the
8 county jail not more than six months, or both fined and
9 imprisoned. Magistrates shall have concurrent jurisdic-
10 tion with circuit courts to enforce the provisions of this
11 article.

12 (b) No state court shall allow the recovery of damages
13 for administrative action taken if the court finds that
14 there was probable cause for such action.

15 (c) In addition to proceeding under any other remedy

16 available at law or in equity for a violation of a provision
17 of this act or a rule or regulation adopted thereunder,
18 or any order issued pursuant to, the commissioner may,
19 after hearing, assess a civil penalty not to exceed five
20 hundred dollars upon a person other than a private
21 applicator for such violation. The civil penalty shall be
22 payable to the state of West Virginia and shall be
23 collectible in any manner now or hereafter provided for
24 collection of debt. If any person liable to pay such civil
25 penalty neglects or refuses to pay the same, the amount
26 of the civil penalty, together with interest at ten percent,
27 shall be a lien in favor of the state of West Virginia upon
28 the property, both real and personal, of such a person
29 after the same has been entered and docketed to record
30 in the county where such property is situated. The
31 county clerk of the county, upon receipt of the certified
32 copy of such, shall enter same to record without
33 requiring the payment of costs as a condition precedent
34 to such recording.

35 (d) Notwithstanding any other provision of law to the
36 contrary, the commissioner may promulgate and adopt
37 regulations which permit consent agreements or nego-
38 tiated settlements for the civil penalties assessed as a
39 result of violation of the provisions of this article.

CHAPTER 132

(H. B. 1329—By Delegate Minard and Delegate Hoblitzell)

[Passed February 25, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing West Virginia's membership in the interstate compact on the Potomac River Basin.

Be it enacted by the Legislature of West Virginia:

That section four, article one-c, 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 1C. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§29-1C-4. Effective date; findings; termination date.

1 This article shall become effective upon the adoption
2 of substantially similar amendments to the interstate
3 compact by each of the signatory states to the compact,
4 and upon the approval of the amendments to the
5 compact by the Congress of the United States.

6 After having conducted a performance and fiscal
7 audit through its joint committee on government
8 operations, pursuant to section nine, article ten, chapter
9 four of this code, the Legislature hereby finds and
10 declares that West Virginia should remain a member of
11 the interstate compact. Accordingly, notwithstanding
12 the provisions of sections four and six, article ten,
13 chapter four of this code, West Virginia shall continue
14 to be a member of this compact until the first day of
15 July, one thousand nine hundred ninety-two.

CHAPTER 133

(H. B. 1213—By Delegate M. Harman and Delegate J. Martin)

[Passed January 31, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b; and to amend and reenact section six of said article nine, all relating to a presumption of death of persons not found nor heard from within six months and whose disappearance can reasonably be believed to have been caused by the flooding on or about the fourth day of November, one thousand nine hundred eighty-five; and issuance of death certificates upon entry of an order that a presumption of death has been established.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. PRESUMED TO BE DEAD AND THEIR ESTATES.

§44-9-1b. When person in area proclaimed to be in a state of emergency presumed dead.

§44-9-6. Order declaring presumption established; probate of will; letters testamentary or of administration; their effect; death certificate issued upon order.

§44-9-1b. When person in area proclaimed to be in a state of emergency presumed dead.

1 A person last seen at any site within the area
 2 proclaimed by the governor on the fifth day of No-
 3 vember, one thousand nine hundred eighty-five, to be in
 4 a state of emergency as a result of the flooding in this
 5 state on or about the fourth day of November, one
 6 thousand nine hundred eighty-five, whose body has not
 7 been found or identified within six months of the date
 8 last seen at such site, and who is unheard of by those
 9 who, had he been alive, would naturally have heard of
 10 him, and whose disappearance can reasonably be
 11 believed to have been caused by such flooding shall in
 12 any case where his death shall come in question be
 13 presumed in law to be dead, in the absence of proof to
 14 the contrary or unless proof be made that he was alive
 15 within that time.

§44-9-6. Order declaring presumption established; pro-
 bate of will; letters testamentary or of admin-
 istration; their effect; death certificate issued
 upon order.

1 If the commission is satisfied, upon the hearing or
 2 from the report of the fiduciary commissioner, that the
 3 legal presumption of death is established, the commis-
 4 sion shall so declare by order, shall then proceed to hear,
 5 and to grant, if proper, the application for probate of
 6 the will of such supposed decedent, if such there be, and
 7 to grant letters testamentary or of administration, as the
 8 case may require, to the party entitled thereto, who shall
 9 qualify and give bonds as in cases of persons known to
 10 be dead. The probate of any such will and such letters,

11 until revoked, and all acts done in pursuance thereof and
12 in reliance thereupon, shall be as valid as if the supposed
13 decedent were in fact dead.

14 Immediately upon the entry of such order declaring
15 that the legal presumption of death is established, the
16 commission shall direct the clerk thereof forthwith to
17 make and deliver to the state registrar of vital statistics
18 the order and such personal data and other information
19 from the records of the proceedings as may enable the
20 state registrar of vital statistics to issue a death
21 certificate. Upon receipt of the order, personal data and
22 other information, the registrar of vital statistics shall
23 forthwith issue and deliver by mail unto the clerk of the
24 county commission wherein such order was entered, a
25 death certificate in the form prescribed by law, except
26 that no medical certification shall be required. The clerk
27 shall record such death certificate in the manner set
28 forth in section nineteen, article five, chapter sixteen of
29 this code.

CHAPTER 134

(Com. Sub. for S. B. 468—By Senator Palumbo)

[Passed March 3, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article four, chapter thirty 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 four-a, all relating to the administration of general anesthesia and parenteral conscious sedation by dentists; legislative findings and purposes; definitions; requiring permits for the administration and supervision of general anesthesia and parenteral conscious sedation by dentists on an out-patient basis; providing for review of general anesthesia and parenteral conscious sedation permits; providing qualifications for eligibility for permits; providing for reporting of adverse anesthesia and conscious sedation occurrences; providing procedures for applications for anesthesia and parenteral conscious sedation permits; and providing penalties for violations.

Be it enacted by the Legislature of West Virginia:

That section eleven, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter thirty be amended by adding thereto a new article, designated article four-a, all to read as follows:

Article

4. Dentists, Dental Hygienists and Dental Corporations.

4A. Administration of General Anesthesia and Parenteral Conscious Sedation By Dentists.

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-11. Right of dentist to prescribe drugs and perform surgical operations; sign death certificates; prescriptions.

1 A licensed dentist shall have the same rights to prescribe
 2 or administer drugs or medicines, perform such surgical
 3 operations, administer local anesthetics and use such
 4 appliances as may be necessary to the proper treatment of
 5 the special class of diseases mentioned in this article as are
 6 enjoyed by registered physicians in this state. A licensed
 7 dentist may administer general anesthesia and parenteral
 8 conscious sedation in accordance with the provisions of
 9 article four-a of this chapter. A licensed dentist shall have
 10 the same right to execute and sign a death certificate when
 11 such is required in the course of his practice as is given to
 12 licensed physicians by the laws of this state. Pharmacists of
 13 this state shall fill prescriptions of licensed dentists in this
 14 state for any drugs necessary for the practice of dentistry.

ARTICLE 4A. ADMINISTRATION OF GENERAL ANESTHESIA AND PARENTERAL CONSCIOUS SEDATION BY DENTISTS.

§30-4A-1. Legislative findings and declaration of purpose.

§30-4A-2. Definitions.

§30-4A-3. Permit of authorization required for both general or parenteral conscious sedation.

§30-4A-4. Eligibility requirements for general anesthesia permit.

§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.

§30-4A-6. Nitrous oxide - oxygen analgesia exclusion.

§30-4A-7. Authority of the West Virginia board of dental examiners to review, inspect and reinspect dentists for issuance of permits.

- §30-4A-8. Appointment of subcommittee by the West Virginia board of dental examiners; credentials review; and on-site inspections.
- §30-4A-9. On-site inspection by West Virginia board of dental examiners.
- §30-4A-10. Immunity from liability.
- §30-4A-11. Effect on practicing dentists who are currently administering or supervising general anesthesia or parenteral conscious sedation; issuance of temporary provisional permits.
- §30-4A-12. Revocation of temporary provisional permits.
- §30-4A-13. New applicants.
- §30-4A-14. Issuance of regular annual permits.
- §30-4A-15. Waiting period for reapplication or reinspection of facilities.
- §30-4A-16. Annual renewal of regular permits; fees.
- §30-4A-17. Violations of article; penalties for practicing general anesthesia or parenteral conscious sedation without a permit.

§30-4A-1. Legislative findings and declaration of purpose.

1 The Legislature hereby finds and declares that dentists
2 are increasingly administering general anesthesia and
3 parenteral conscious sedation in their offices on an out-
4 patient basis; that the administration of general anesthesia
5 and parenteral conscious sedation carries with it an
6 inherent risk and danger to the patient; that, however, the
7 administration of general anesthesia and parenteral
8 conscious sedation on an out-patient basis by dentists is
9 necessary and for the good of the public; but that because of
10 the inherent dangers in the administration of general
11 anesthesia and parenteral conscious sedation, it is
12 necessary to ensure that the persons administering and
13 supervising such general anesthesia or parenteral conscious
14 sedation are competent and trained in the techniques; that
15 it is in the best interests of the public and the dentists of
16 West Virginia to prohibit dentists from administering or
17 supervising the administration of general anesthesia or
18 parenteral conscious sedation unless those dentists meet
19 certain minimal training and competency standards in the
20 administration and supervision of general anesthesia or
21 parenteral conscious sedation; and that requiring a dentist
22 to obtain a special permit before he or she can administer or
23 supervise general anesthesia or parenteral conscious
24 sedation is the best method to preserve the use of general
25 anesthesia and parenteral conscious sedation by dentists on
26 out-patients and, at the same time, ensure that such
27 administration and supervision is performed by competent
28 dentists trained in the use of such techniques.

§30-4A-2. Definitions.

1 (a) The scope of practice of a licensed "dentist" is
2 defined in section two, article four of this chapter.

3 (b) "General anesthesia" means a controlled state of
4 unconsciousness produced by any drug or pharmacologic
5 agent accompanied by a partial or complete loss of
6 protective reflexes, including the inability to independently
7 maintain an airway and respond purposefully to physical
8 stimulation of verbal commands.

9 (c) "Nitrous oxide - oxygen analgesia" refers to the
10 administration by inhalation of a combination of nitrous
11 oxide and oxygen gas which produces an altered level of
12 consciousness without the loss of the patient's ability to
13 independently and continuously maintain an airway and
14 respond appropriately to physical stimulation or verbal
15 commands.

16 (d) "Parenteral conscious sedation" means a depressed
17 state of consciousness produced by the injection of
18 pharmacologic substances that retains the patient's ability
19 to independently and continuously maintain an airway and
20 respond appropriately to physical stimulation or verbal
21 commands.

22 (e) "State of consciousness" refers to a patient being
23 fully capable of rational response to verbal commands, with
24 all protective reflexes intact, and including the ability to
25 clear and maintain an airway in a patent state.

§30-4A-3. Permit of authorization required for both general or parenteral conscious sedation.

1 No dentist may administer or supervise the
2 administration of general anesthesia and parenteral
3 conscious sedation for dental patients unless such dentist
4 possesses a permit of authorization from the West Virginia
5 board of dental examiners: *Provided*, That no such permit
6 shall be required for the administration of general
7 anesthesia or parenteral conscious sedation by a dentist in a
8 hospital licensed by the state of West Virginia.

§30-4A-4. Eligibility requirements for general anesthesia permit.

1 To receive a permit for the use of general anesthesia and

2 parenteral conscious sedation, a dentist shall:

3 (a) Be a dentist licensed by the West Virginia board of
4 dental examiners, hereinafter sometimes referred to as the
5 "board," or as "board of dental examiners" and registered
6 to practice dentistry in the state of West Virginia;

7 (b) Apply to the West Virginia board of dental
8 examiners on an application form prescribed by the board;

9 (c) Include with the application an application fee in the
10 amount of three hundred dollars;

11 (d) Have a properly equipped facility for the
12 administration of general anesthesia, staffed with a
13 supervised team of auxiliary personnel capable of
14 reasonably handling procedures, problems, and
15 emergencies incident thereto as outlined in the office
16 anesthesia evaluation manual as adopted and amended by
17 the board of dental examiners;

18 (e) In the case of any dentist who treats children who
19 applies for any permit under this section, such dentist must
20 document his or her competency to administer general
21 anesthesia and parenteral conscious sedation to children by
22 demonstrating to the satisfaction of the board his or her
23 familiarity with the "Guidelines for the elective use of
24 conscious sedation, deep sedation and general anesthesia in
25 pediatric patients" of American Academy of Pediatrics and
26 the American Academy of Pediatric Dentistry; and

27 (f) Produce evidence showing at least one of the
28 following:

29 (1) He or she has completed a minimum of one year of
30 advanced training in an approved anesthesia residency;

31 (2) He or she is a diplomate of the American board of
32 oral and maxillofacial surgery;

33 (3) He or she is eligible for an examination by the
34 American board of oral and maxillofacial surgery
35 (ABOMS);

36 (4) He or she is a fellow of the American association of
37 oral and maxillofacial surgery (AAOMS);

38 (5) He or she has successfully completed an American
39 dental association accredited oral and maxillofacial
40 surgery program as evidenced by a letter from the program
41 director stating that said applicant is qualified to perform
42 such anesthesia techniques;

43 (6) He or she is a fellow of the American dental society of

44 anesthesiology; or

45 (7) He or she employs or works in conjunction with a
46 licensed and trained doctor of medicine or osteopathic
47 physician who is a member of the anesthesiology staff of a
48 hospital licensed by the state of West Virginia, provided
49 such anesthesiologist personally supervises or administers
50 said general anesthesia and remains on the premises of the
51 dental facility until any patient given a general anesthetic
52 or parenteral conscious sedation regains consciousness.

**§30-4A-5. Eligibility requirements for permit to administer
parenteral conscious sedation only.**

1 To receive a permit for use of parenteral conscious
2 sedation only, the dentist shall:

3 (a) Be a dentist licensed by the West Virginia board of
4 dental examiners and registered to practice dentistry in the
5 state of West Virginia;

6 (b) Apply to the West Virginia board of dental
7 examiners on an application form prescribed by the board
8 for the use of parenteral conscious sedation only;

9 (c) Include with the application a fee in the amount of
10 three hundred dollars;

11 (d) Maintain a properly equipped facility for the
12 administration of parenteral conscious sedation, staffed
13 with a supervised team of auxiliary personnel capable of
14 reasonably handling procedures, problems, and
15 emergencies incident thereto as outlined in the office
16 anesthesia evaluation manual specified in section four of
17 this article;

18 (e) In the case of any dentist who treats children who
19 applies for any permit under this section, such dentist must
20 document his or her competency to administer parenteral
21 conscious sedation to children by demonstrating to the
22 satisfaction of the board his or her familiarity with the
23 "Guidelines for the elective use of conscious sedation, deep
24 sedation and general anesthesia in pediatric patients" of
25 the American Academy of Pediatrics and the American
26 Academy of Pediatric Dentistry; and

27 (f) Produce evidence showing at least one of the
28 following:

29 (1) He or she meets at least one of the criteria described
30 in subdivisions (1) through (7), subsection (e), section four

31 of this article;

32 (2) He or she has satisfactorily completed at least one
33 year of post-doctoral dental training in a dental residency
34 or speciality program approved by the American dental
35 association or the American medical association which
36 must include didactic studies and practical experience in
37 the administration of general anesthesia and parenteral
38 conscious sedation. A letter from the chief of the approved
39 residency program verifying that said dentist has
40 satisfactorily completed said training and is competent to
41 administer parenteral conscious sedation may be deemed
42 acceptable evidence thereof; or

43 (3) He or she has satisfactorily completed a continuing
44 education course or program regarding the administration
45 of parenteral conscious sedation which meets or exceeds the
46 American dental association council on dental education's
47 current "Guidelines for Teaching the Comprehensive
48 Control of Pain and Anxiety in Dentistry."

§30-4A-6. Nitrous oxide - oxygen analgesia exclusion.

The administration of nitrous oxide - oxygen inhalation
2 analgesia shall not require a special permit for use by a
3 licensed dentist. However, a licensed dentist rendering such
4 treatment to their patients shall have a properly equipped
5 facility for the administration of nitrous oxide-oxygen
6 inhalation analgesia. The dentist and their office personnel
7 shall have instruction in the administration of cardiac life
8 support. The nitrous oxide-oxygen inhalation equipment
9 shall have fail-safe features and a minimum twenty-five
10 percent oxygen flow.

**§30-4A-7. Authority of the West Virginia board of dental
examiners to review, inspect and reinspect
dentists for issuance of permits.**

1 By making application to the board of dental examiners
2 for a general anesthesia or parenteral conscious sedation
3 permit, said dentist consents and authorizes the board of
4 dental examiners to review his or her credentials, inspect or
5 reinspect his or her facilities, and investigate any alleged
6 anesthesia mortalities, misadventures, or other adverse
7 occurrences which the board feels is justified in the best
8 interest of the public and the board. The board of dental

9 examiners shall have the authority and right to conduct an
10 in-office review or on-site inspection of any dentist
11 applying for or holding a permit to administer general
12 anesthesia or parenteral conscious sedation at any time the
13 board deems necessary.

§30-4A-8. Appointment of subcommittee by the West Virginia board of dental examiners; credentials review; and on-site inspections.

1 The West Virginia board of dental examiners shall
2 appoint a five member subcommittee to carry out the
3 review and on-site inspection of any dentist applying for or
4 renewing a permit under this article. The subcommittee
5 shall also make a recommendation for issuing or revoking a
6 permit under this article. This subcommittee shall be
7 known as the "West Virginia Board of Dental Examiners
8 Subcommittee on General Anesthesia and Parenteral
9 Conscious Sedation," hereinafter referred to as the
10 "subcommittee." The subcommittee shall consist of one
11 member of the board of dental examiners who shall act as
12 chairman of the subcommittee, one diplomate of the
13 American board of oral and maxillofacial surgery; one
14 fellow of the American dental society of anesthesiology or
15 fellow of the American association of oral and maxillofacial
16 surgery; one general dental practitioner engaged in
17 providing out-patient general anesthesia or parenteral
18 conscious sedation services; and one dental practitioner
19 specializing in pediatric dentistry. Four members of the
20 subcommittee must be practitioners possessing a current
21 general anesthesia or parenteral conscious sedation permit.
22 During the first year of the existence of the subcommittee,
23 the four members of the subcommittee shall possess
24 qualifications as described herein for a temporary
25 provisional permit. No subcommittee member shall serve
26 longer than a four-year term. Initial members of the
27 subcommittee may be appointed to longer or shorter terms
28 at the discretion of the board of dental examiners so that the
29 terms may be staggered and the subcommittee may
30 maintain experienced and qualified members at all times.

§30-4A-9. On-site inspection by West Virginia board of dental examiners.

1 Prior to issuing a permit, the board of dental examiners

2 has the right to conduct an on-site inspection of facility,
3 equipment, and auxiliary personnel of the applicant to
4 determine if, in fact, all the requirements for such permit
5 have been met. This inspection or evaluation, if required,
6 shall be carried out by at least two members of the
7 subcommittee directly appointed by the board of dental
8 examiners as prescribed in section eight of this article. This
9 evaluation is to be carried out in a manner following the
10 principles, but not necessarily the procedures, set forth by
11 the current edition of the office anesthesia evaluation
12 manual of the West Virginia board of dental examiners.
13 On-site inspections are required and shall be performed for
14 all initial applicants. Thereafter, the board may reinspect
15 annually, at its discretion, but must perform an on-site
16 inspection for all permit holders at least once every five
17 years. The board reserves the right to conduct an on-site
18 inspection whenever it deems necessary. However, all on-
19 site inspections shall be held during regular business hours
20 and with at least forty-eight hours' notification.

§30-4A-10. Immunity from liability.

1 (a) Notwithstanding any other provision of law, no
2 person providing information to the board of dental
3 examiners or to the subcommittee may be held, by reason of
4 having provided such information, to be civilly liable under
5 any law unless such information was false and the person
6 providing such information knew or had reason to believe
7 that such information was false.

8 (b) No member or employee of the board of dental
9 examiners or the subcommittee may be held by reason of the
10 performance by him or her of any duty, function or activity
11 authorized or required of the board or the subcommittee to
12 be civilly liable. The foregoing provisions of this subsection
13 shall not apply with respect to any action taken by any
14 individual if such individual, in taking such action, was
15 motivated by malice toward any person affected by such
16 action.

§30-4A-11. Effect on practicing dentists who are currently administering or supervising general anesthesia or parenteral conscious sedation; issuance of temporary provisional permits.

1 Within ninety days following the effective date of this

2 article, all dentists currently administering or supervising
3 general anesthesia or parenteral conscious sedation and
4 desiring to continue such practice shall make application to
5 the board of dental examiners for the issuance of an
6 immediate temporary provisional permit. This temporary
7 provisional permit shall be valid for up to a maximum of
8 one year. This temporary provisional permit will only be
9 valid until the board is able to conduct a thorough review of
10 the applicant's credentials and an on-site evaluation of the
11 dentist's facilities, equipment, techniques, and personnel as
12 described herein, but in no event will the permit be valid for
13 more than one year. Failure to apply within ninety days
14 shall cause the board to consider the currently practicing
15 dentist as a new applicant.

§30-4A-12. Revocation of temporary provisional permits.

1 Failure of the dentist to meet the minimal credentials or
2 failure to pass the on-site inspection or evaluation
3 prescribed in this article may result in the immediate
4 revocation of the temporary provisional permit. A dentist
5 who has had a temporary provisional permit revoked shall
6 be required to wait thirty days from the date of revocation
7 prior to reapplying for another permit as described in
8 section fifteen of this article.

§30-4A-13. New applicants.

1 On the effective date of this article and from that date
2 forward, any dentist not previously administering or
3 supervising general anesthesia or parenteral conscious
4 sedation techniques but wishing to do so, shall make
5 application to the board as prescribed herein. The board
6 and the subcommittee shall then review the applicant's
7 credentials and further will require an on-site evaluation of
8 the dentist's facilities, equipment, techniques, and
9 personnel prior to issuing a regular annual permit. After the
10 initial on-site inspection, the board, at its discretion, will
11 conduct further on-site evaluations as described in section
12 nine of this article.

§30-4A-14. Issuance of regular annual permits.

1 Upon the recommendations of the subcommittee to the
2 board of dental examiners, the board shall issue regular

3 permits to applicable dentists. A general anesthesia or
4 parenteral conscious sedation permit must be renewed
5 annually as described in section sixteen of this article.

§30-4A-15. Waiting period for reapplication or reinspection of facilities.

1 A dentist whose application has been denied for failure to
2 satisfy the requirements in the application procedure or the
3 on-site evaluation must wait thirty days from the date of
4 such denial prior to reapplying and must submit to another
5 on-site evaluation prior to receiving a regular annual
6 permit. It is the responsibility of the board and the
7 subcommittee to promptly reinspect the applicant dentist's
8 facilities, techniques, equipment, and personnel within
9 ninety days after said applicant has made reapplication.

§30-4A-16. Annual renewal of regular permits; fees.

1 The board of dental examiners shall require an
2 application for annual renewal of a previously issued
3 general anesthesia or parenteral conscious sedation permit
4 and will require a renewal fee of one hundred dollars. The
5 board shall renew permits for the use of general anesthesia
6 or parenteral conscious sedation after receiving the renewal
7 fee, unless the permit holder has been informed in writing
8 within sixty days prior to such renewal date that a
9 reevaluation of his or her credentials is required. In
10 determining whether such reevaluation is necessary, the
11 board may consider such factors as it deems appropriate,
12 including, but not limited to, patient, dentist or physician
13 complaints and reports of adverse occurrences or
14 misadventures. Reevaluation may also include a yearly
15 on-site inspection of the facility, equipment, personnel,
16 licentiate and procedures utilized by the holder of such
17 permit. However, an on-site inspection of the facility,
18 equipment, personnel, licentiate and procedures utilized by
19 the holder of such a permit will be required for all permit
20 holders within a five-year period from the permit holder's
21 last on-site inspection.

§30-4A-17. Violations of article; penalties for practicing general anesthesia or parenteral conscious sedation without a permit.

1 Violations of any of the provisions of this article, whether

2 intentional or unintentional, may result in the revocation or
3 suspension of the dentist's permit to administer general
4 anesthesia or parenteral conscious sedation; multiple or
5 repeated violations or gross infractions, such as practicing
6 general anesthesia or parenteral conscious sedation
7 without a valid permit may result in suspension of the
8 dentist's license to practice dentistry for up to one year as
9 well as other disciplinary measures as deemed appropriate
10 by the board of dental examiners.

CHAPTER 135

(Com. Sub. for H. B. 1614—By Delegate Wiedebusch and Delegate Hatfield)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section ten, article seven-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensure for practical nurses; professional misconduct as grounds for discipline for practical nurses; and requiring rules and regulations to be promulgated by legislative rule-making review authority.

Be it enacted by the Legislature of West Virginia:

That section ten, article seven-a, 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 7A. PRACTICAL NURSES.

§30-7A-10. Disciplinary proceeding; grounds for discipline.

1 The board shall have the right, in accordance with
2 rules and regulations promulgated under the provisions
3 of article three, chapter twenty-nine-a of this code, to
4 refuse to admit an applicant for the licensure examina-
5 tion for the hereinafter stated reasons, and also the
6 board shall have the power to revoke or suspend any
7 license to practice practical nursing issued by the board
8 in accordance with the provisions of this article, or to

9 otherwise discipline a licensee upon satisfactory proof
10 that the person: (1) Is guilty of fraud or deceit in
11 procuring or attempting to procure a license to practice
12 practical nursing; or (2) is convicted of a felony; or (3)
13 is habitually intemperate or is addicted to the use of
14 habit-forming drugs; or (4) is mentally incompetent; or
15 (5) is guilty of professional misconduct as defined by the
16 board; or (6) who practices or attempts to practice
17 without a license or who willfully or repeatedly violates
18 any of the provisions of this article.

CHAPTER 136

(H. B. 1130—By Delegate Underwood and Delegate Shiflet)

[Passed February 10, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and seven, article ten, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia board of veterinary medicine; raising the per diem limit for board members; removing the sixty-day registration requirement for applicants and allowing applicants to register to take the examination up to time of the examination.

Be it enacted by the Legislature of West Virginia:

That sections three and seven, article ten, 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 10. VETERINARIANS.

§30-10-3. West Virginia board of veterinary medicine; composition; qualifications, appointment and terms of members; vacancies; removal of member; compensation; organization and meetings; quorum; secretary-treasurer; records, etc., open to public; annual report; funds.

§30-10-7. Examinations; issuance or denial of license authorization of veterinary medical corporations; assistants; fee.

§30-10-3. West Virginia board of veterinary medicine; composition; qualifications, appointment

and terms of members; vacancies; removal of member; compensation; organization and meetings; quorum; secretary-treasurer; records, etc., open to public; annual report; funds.

1 The "West Virginia veterinary board," heretofore
2 created, shall continue in existence but on and after the
3 effective date of this article shall be known and
4 designated as "The West Virginia board of veterinary
5 medicine," and shall consist of five members, not more
6 than three of whom shall belong to the same political
7 party to be appointed by the governor with the advice
8 and consent of the Senate. The three members of the
9 board in office on the effective date of this article shall,
10 unless sooner removed, continue to serve until their
11 terms expire and until their successors have been
12 appointed and have qualified. On or before July one, one
13 thousand nine hundred sixty-seven, the governor shall
14 appoint one member to serve until June thirty, one
15 thousand nine hundred sixty-eight, and one member to
16 serve until June thirty, one thousand nine hundred
17 seventy, or until their successors have been appointed
18 and have qualified. As the terms of the three members
19 of the board in office on the effective date of this article
20 expire and as the terms of the two members to be
21 appointed by the governor on or before July one, one
22 thousand nine hundred sixty-seven, expire, members
23 shall be appointed for overlapping terms of five years,
24 so that one term expires each year, or until their
25 successors have been appointed and have qualified. Any
26 vacancy in the office of a member of the board shall be
27 filled by appointment by the governor for the unexpired
28 term of the member whose office shall be vacant. No
29 person shall be appointed to two consecutive full terms,
30 but a person appointed for a term of less than five years
31 may be appointed to succeed himself. The governor may
32 remove any member of the board for neglect of duty or
33 other sufficient cause.

34 No person shall be appointed to the board unless he
35 be a graduate of a veterinary school and a resident of
36 this state, and unless he shall have been licensed to

37 practice veterinary medicine in this state for at least
38 three years immediately preceding his appointment.

39 As compensation for his services on the board, each
40 member shall receive, out of the moneys collected
41 hereunder, a sum not to exceed one hundred dollars for
42 each day or substantial portion thereof that he is
43 engaged in the work of the board. Each member shall
44 also be entitled to be reimbursed, out of the moneys
45 collected hereunder, for any reasonable and necessary
46 expenses actually incurred in the discharge of his duties
47 as a member of the board.

48 The board shall meet at least once each year, the time
49 and place of such meeting to be fixed by the board, and
50 at such annual meeting shall elect from its membership
51 a president, a secretary-treasurer and such other
52 officers as may be desired. Other meetings of the board
53 may be called by the president on such notice to the
54 other members as may be prescribed by the board. A
55 majority of the board shall constitute a quorum for the
56 transaction of the business of the board. All meetings
57 of the board shall be open and public, except that the
58 board may meet in closed session to prepare, approve,
59 administer, or grade examinations, to deliberate
60 decisions to be reached on disciplinary proceedings, or
61 to review the qualifications of an applicant for a license.

62 It shall be the duty of the secretary-treasurer to carry
63 on the correspondence of the board, keep permanent
64 accounts and records of all receipts and disbursements
65 by the board and of all board proceedings, including the
66 disposition of all applications for license, and keep a
67 register of all persons currently licensed by the board.
68 All board records, except as otherwise provided by law,
69 shall be open to public inspection during regular office
70 hours. The secretary-treasurer shall furnish to the board
71 a fidelity surety bond in such sum and conditioned as
72 the board may require, the cost of such bond to be paid
73 by the board out of the moneys collected hereunder.

74 As soon as possible after the close of each fiscal year,
75 the president and secretary-treasurer shall submit to the
76 governor a report on the transactions of the board,

77 including an accounting of all moneys received and
78 disbursed.

79 All moneys received by the board shall be accepted
80 by the secretary-treasurer and deposited by him with
81 the treasurer of the state and credited by the treasurer
82 to an account to be known as the "board of veterinary
83 medicine fund." All expenses of the board shall be paid
84 from such fund by voucher signed by the secretary-
85 treasurer of the board, and no part of the state's general
86 revenue fund shall be expended for this purpose.

**§30-10-7. Examinations; issuance or denial of license
authorization of veterinary medical corpora-
tions; assistants; fee.**

1 The board shall hold at least one examination during
2 each year and may hold such additional examinations
3 as are necessary. The secretary-treasurer shall give
4 public notice of the time and place of each examination
5 at least one hundred twenty days in advance of the date
6 set for such examination. A person desiring to take an
7 examination shall make application for a license to the
8 board.

9 Procedures concerning the preparation, administra-
10 tion and grading of examinations shall be prescribed by
11 the board. Examinations shall be designed to test the
12 examinee's knowledge of and proficiency in the subjects
13 and techniques commonly taught in veterinary schools.
14 To pass the examination, the examinee must demon-
15 strate scientific and practical knowledge sufficient to
16 prove himself a competent person to practice veterinary
17 medicine in the judgment of the board. All examinees
18 shall be tested by a written examination, supplemented
19 by such oral interviews and practical demonstrations as
20 the board may deem necessary. The board may adopt
21 and use the examination prepared by the national board
22 of veterinary examiners.

23 The secretary-treasurer shall notify each examinee of
24 the result of his examination within forty-five days
25 thereafter, and the board shall issue a license to each
26 person who passes the examination. The application for
27 a license by any person failing an examination shall be

28 denied, but such person shall be admitted to any
29 subsequent examination upon payment of another
30 application fee.

31 The board shall also examine the application of any
32 one or more veterinarians for the formation of a
33 veterinary medical corporation, filed pursuant to the
34 provisions of section eighteen of this article, and issue
35 a certificate of authorization therefor to any applicant
36 or applicants legally entitled to receive the same. The
37 board shall also have authority to authorize veterinary
38 medical corporations, in accordance with the provisions
39 of sections eighteen and nineteen of this article to
40 practice veterinary medicine and surgery through duly
41 licensed veterinarians.

42 The board shall have the power to certify and
43 establish standards for employment of assistants to
44 veterinarians.

45 No license shall be issued under the provisions of this
46 section until the person applying therefor shall have
47 paid to the board a fee of five dollars.

CHAPTER 137

(S. B. 563—By Senators Colombo and Whitacre)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five and six, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creation of board of examiners of land surveyors; appointment terms, removal, etc., of members; officers; meetings; compensation and expenses; powers and duties of board; funds, not part of general revenue; the licensing of land surveyors; qualifications of applicants for licenses; exceptions; applications; examinations; issuance of licence; notice of expiration; display; and fees for issuance and renewal.

Be it enacted by the Legislature of West Virginia:

That sections three, five and six, article thirteen-a, 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 13A. LAND SURVEYORS.

§30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

§30-13A-5. Qualifications of applicants for licenses; exceptions; applications; fees; examinations.

§30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.

§30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

1 (a) There is hereby created the state board of examiners
2 of land surveyors which shall be composed of three
3 members appointed by the governor by and with the advice
4 and consent of the Senate. Each member shall have been
5 actively engaged in the practice of land surveying for at
6 least ten years and shall be the holder of a license under the
7 provisions of this article.

8 (b) The members of the board shall be appointed for
9 overlapping terms of three years each ending on the
10 thirtieth day of June, and until their respective successors
11 have been appointed and qualified. Members may be
12 reappointed for any number of terms. Before entering upon
13 the performance of his duties, each member shall take and
14 subscribe to the oath required by section five, article four of
15 the constitution of this state. Vacancies shall be filled by
16 appointment by the governor for the unexpired term of the
17 member whose office shall be vacant and such appointment
18 shall be made within sixty days of the occurrence of such
19 vacancy. Any member may be removed by the governor in
20 case of incompetency, neglect of duty, gross immorality or
21 malfeasance in office.

22 (c) The board shall elect from its membership a
23 chairman and secretary-treasurer. A majority of the
24 members of the board shall constitute a quorum and
25 meetings shall be held at the call of the chairman or upon

26 the written request of two members at such time and place
27 as designated in such call or request, and, in any event, the
28 board shall meet at least once annually to conduct the
29 examination hereinafter provided for and to transact such
30 other business as may come before it.

31 (d) Members shall be paid such reasonable
32 compensation as the board may from time to time
33 determine, and in addition may be reimbursed for all
34 reasonable and necessary expenses actually incurred in the
35 performance of their duties, which compensation and
36 expenses shall be paid in accordance with the provisions of
37 subsection (b), section four of this article.

38 (e) The board shall be terminated pursuant to the
39 provisions of article ten, chapter four of this code on the
40 first day of July, one thousand nine hundred ninety-two,
41 unless sooner terminated or unless continued or
42 reestablished pursuant to this article and chapter.

**§30-13A-5. Qualifications of applicants for licenses;
exceptions; applications; fees; examinations.**

1 (a) To be eligible for a license to engage in the practice of
2 land surveying, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Have been a resident of the United States for one
6 year immediately preceding the date of application;

7 (4) Not have been convicted of a crime involving moral
8 turpitude;

9 (5) Have four years or more experience in the practice of
10 land surveying under the supervision of a licensee, or a
11 person eligible for a license hereunder, or a person
12 authorized in another state or country to engage in the
13 practice of land surveying; and each year of satisfactory
14 study in an accredited surveying curriculum may be
15 substituted for one year of experience, but only two years of
16 such experience requirement may be fulfilled by such
17 study; and

18 (6) Have passed the examination prescribed by the
19 board, which examination shall cover the basic subject
20 matter of land surveying and land surveying skills and
21 techniques.

22 (b) The following persons shall be eligible for a license

23 to engage in the practice of land surveying without
24 examination:

25 (1) Any applicant who is licensed, certificated or
26 registered to engage in the practice of land surveying in any
27 other state or country, if the requirements to obtain a
28 license or certificate or to become registered in such other
29 state or country are found by the board to be at least as great
30 as those prescribed in this article;

31 (2) Any applicant who is a graduate of an accredited
32 surveying curriculum and has at least two years of
33 experience in the practice of land surveying under the
34 supervision of a licensee, or a person eligible for a license
35 hereunder, or a person authorized in another state or
36 country to engage in the practice of land surveying, if such
37 applicant meets the requirements of subdivisions (1), (2), (3)
38 and (4), subsection (a) of this section; and

39 (3) Any applicant who has been engaged in the practice
40 of land surveying in West Virginia for at least six years prior
41 to the filing of such application, if such application for a
42 license is made within three years after the effective date of
43 this article and if such person meets the requirements of
44 subdivisions (1), (2), (3) and (4), subsection (a) of this
45 section. Such applicant must also furnish the names and
46 addresses of ten persons who have engaged such applicant
47 as a land surveyor, together with satisfactory records of
48 such land surveying work.

49 (c) Any applicant for any such license shall submit an
50 application therefor on forms provided by the board. Such
51 application shall be verified and shall contain a statement
52 of the applicant's education and experience, the names of
53 five persons for reference (at least three of whom shall be
54 licensees, or persons eligible for a license hereunder, or
55 persons authorized in another state or country to engage in
56 the practice of land surveying, who have knowledge of his
57 work) and such other information as the board may from
58 time to time by reasonable rule and regulation prescribe.

59 (d) An applicant shall pay to the board with his
60 application a license fee of seventy dollars.

61 (e) Examinations shall be held at least once each year at
62 such time and place as the board shall determine. The scope
63 of the examination and methods of procedure shall be
64 determined by the board. An applicant who fails to pass an

65 examination may reapply at any time and shall furnish
66 additional information as requested by the board. Each
67 such application shall be accompanied by a license fee of
68 thirty dollars.

69 (f) A licensee who obtained his license under the
70 provisions of subdivisions (2) and (3), subsection (b) of this
71 section may, in addition, apply for licensing under the
72 provisions of subsection (a) of this section, if such licensee
73 pays the fee otherwise required to be paid by other
74 applicants and if such licensee meets the qualifications of
75 subsection (a). Any applicant may apply for a separate
76 license under subsection (a), or subdivisions (2) or (3),
77 subsection (b) of this section upon the payment of the
78 required fee for each license, and he may receive a license
79 for each subsection for which such person makes
80 application and is qualified. If any person fails to qualify
81 for a license under any subsection of this section, such
82 failure to qualify shall not prevent such person's licensure
83 under any other subsection of this section for which such
84 person is otherwise qualified.

**§30-13A-6. Issuance of license; notice of expiration; renewal;
renewal fee; display.**

1 Whenever the board finds that an applicant meets all of
2 the requirements of this article for a license to engage in the
3 practice of land surveying, it shall forthwith issue to him
4 such license; and otherwise the board shall deny the same.
5 All licenses, whether original or renewal, shall expire on the
6 thirtieth day of June following the date of issuance or
7 renewal. The secretary-treasurer of the board shall mail to
8 every licensee, at least thirty days prior to the expiration of
9 such license, notice of the expiration date and the amount of
10 the renewal fee. A license may be renewed without
11 examination upon application for a renewal on a form
12 prescribed by the board and payment to the board of an
13 annual renewal fee of thirty dollars. If a license is not
14 renewed when due, the fee shall increase one dollar per
15 month for each month or fraction thereof that such renewal
16 fee is not paid, up to a maximum of thirty-six months. No
17 license shall be renewed after expiration of said period of
18 thirty-six months, and the fact that a license cannot be
19 renewed because of the expiration of said period of thirty-

20 six months shall not prevent such person from making
21 application for a new license. The board may deny any
22 application for renewal for any reason which would justify
23 the denial of an original application for a license. The board
24 shall prescribe the form of licenses and each such license
25 shall be conspicuously displayed by the licensee at his
26 principal place of practice. A duplicate license may be
27 issued upon payment of a fee of five dollars.

CHAPTER 138

(H. B. 1346—By Delegate Minard and Delegate Hatfield)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating to licensing of professional counselors; legislative purpose; definitions; exemption of certain activities and persons from licensure; creating the West Virginia board of examiners in counseling; qualifications, composition and appointment of members of board; powers and duties of board; prohibiting the practice of counseling without a license; qualifications required of applicants for a license to practice counseling; license application fees; issuance of licenses by the board; renewal of licenses required biennially; license renewal fees; grounds for suspension or revocation of license; providing procedures for hearing upon denial, suspension or revocation of a license; hearings to be governed by the administrative procedures act; judicial review of decisions of the board to be governed by the administrative procedures act; criminal penalties; and authorizing action to enjoin violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

- §30-31-1. Legislative purpose.
- §30-31-2. Definitions.
- §30-31-3. Activities exempted; persons exempted from licensing; limitations on licensed professional counselors.
- §30-31-4. Board of examiners in counseling; appointment and qualifications of members.
- §30-31-5. Powers and duties of board; disposition of board funds.
- §30-31-6. License required.
- §30-31-7. Qualifications of applicants for license; application fee.
- §30-31-8. Issuance of license; renewal of license; renewal fee; information required in application for renewal.
- §30-31-9. Suspension or revocation of license.
- §30-31-10. Procedures for hearing.
- §30-31-11. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §30-31-12. Penalties.
- §30-31-13. Disclosure.
- §30-31-14. Actions to enjoin violations.
- §30-31-15. Termination of board.

§30-31-1. Legislative purpose.

1 The Legislature hereby finds that in the public
2 interest, persons should not engage in the practice of
3 counseling or therapy in this state without the requisite
4 experience and training; and that there is presently no
5 adequate means to protect the interests of the citizens
6 of this state from the unauthorized, unqualified and
7 unprofessional practice of counseling. It is therefore
8 declared to be the public policy of this state that the
9 practice of counseling affects the general welfare and
10 public interest of the state and its citizens; that persons
11 without the necessary qualifications, training, educa-
12 tion, experience and persons not of good character
13 should not engage in the practice of counseling; that the
14 unauthorized, unqualified and unprofessional practice of
15 counseling may be best prevented, and the interest of
16 the public best served, by regulating and controlling
17 such practice as provided in this article; and that this
18 article should be liberally construed to effect such
19 objects and purposes.

§30-31-2. Definitions.

1 As used in this article:

2 (1) "Applicant" means any person making an applica-
3 tion for an original or renewal license under the
4 provisions of this article;

5 (2) "Board" means the West Virginia board of exa-
6 miners in counseling established by this article;

7 (3) "Counseling" means rendering, offering to render
8 or supervising those who render any service for
9 compensation or other personal gain involving the
10 application of mental health counseling procedures to
11 help in learning how to solve problems or make
12 decisions related to careers, personal growth, marriage,
13 family or other interpersonal or intrapersonal concerns;

14 (4) "Counselor" means one who holds himself or
15 herself out to the public as engaged in the practice of
16 counseling as defined herein, and, in so doing, repres-
17 ents that he or she has the knowledge, training,
18 expertise and ethical standards necessary to engage in
19 such practice;

20 (5) "Licensed professional counselor" means a counse-
21 lor as defined herein who holds a valid license to
22 practice counseling issued pursuant to this article; and

23 (6) "Mental health counseling procedures" include,
24 but are not restricted to, the use of methods and
25 techniques which contribute to self-understanding,
26 desired personal behavior change or more effective
27 interpersonal behavior; assessment techniques useful in
28 appraising aptitudes, abilities, achievements, interest or
29 attitudes; informational and community resources for
30 career, personal or social development; individual and
31 group techniques which facilitate problem-solving
32 behavior or decision making; and supervision, referral
33 and placement techniques and methods which serve to
34 further the goals of counseling.

**§30-31-3. Activities exempted; persons exempted from
licensing; limitations on licensed professional
counselors.**

1 (a) Nothing in this article applies to the following
2 activities:

3 (1) Teaching, lecturing or engaging in research in
4 counseling so long as such activities do not otherwise
5 involve the practice of counseling directly affecting the
6 welfare of the person counseled;

7 (2) The official duties of persons employed as counse-
8 lors by the state of West Virginia, any of its depart-
9 ments, agencies, divisions, bureaus, political subdivi-
10 sions, counties, county boards of education, regional
11 education service agencies, municipalities or any other
12 facilities or programs established, supported or funded,
13 in whole or in part, by any such governmental entity;

14 (3) The official duties of persons employed as counse-
15 lors by any department, agency, division or bureau of
16 the United States of America;

17 (4) The official duties of persons serving as counselors,
18 whether as volunteers or for compensation or other
19 personal gain, in any public or private nonprofit
20 corporations, organizations, associations or charities;

21 (5) The official duties of persons who are employed by
22 a licensed professional counselor, whose duties are
23 supervised by a licensed professional counselor and who
24 represent themselves by a title such as "counselor
25 trainee," "counselor intern," "counselor assistant" or
26 other reasonable facsimile of such title, and do not
27 represent themselves as licensed professional counselors
28 as defined by section two of this article;

29 (6) The activities of a student of counseling which are
30 part of the prescribed course of study at an accredited
31 educational institution and are supervised by a licensed
32 professional counselor or by a teacher, instructor or
33 professor of counseling acting within the official duties
34 or scope of activities exempted by this section; or

35 (7) The activities and services of qualified members
36 of other recognized professions such as physicians,
37 psychologists, psychoanalysts, social workers, lawyers,
38 nurses, teachers and clergymen performing counseling
39 consistent with the laws of this state, their training and
40 any code of ethics of their professions so long as such
41 persons do not represent themselves as licensed profes-

42 sional counselors as defined by section two of this article.

43 (b) Nothing in the article requires licensing of the
44 following persons pursuant to this article:

45 (1) A school counselor who holds a school counseling
46 certificate issued by the West Virginia department of
47 education and who is engaged in counseling solely
48 within the scope of his or her employment with such
49 department, a county board of education or a regional
50 education service agency; or

51 (2) A nonresident counselor who holds a license or
52 certificate to engage in the practice of counseling issued
53 by another state, the qualifications for which in the
54 opinion of the board are at least as stringent as those
55 provided in section seven of this article, and who renders
56 counseling services in this state for no more than thirty
57 days in any calendar year.

58 (c) Nothing in this article permits licensed profes-
59 sional counselors to administer or prescribe drugs or
60 otherwise engage in the practice of medicine as defined
61 by this code.

**§30-31-4. Board of examiners in counseling; appointment
and qualifications of members.**

1 (a) There is hereby created a West Virginia board of
2 examiners in counseling, consisting of seven members
3 who shall be appointed by the governor by and with the
4 advice and consent of the Senate, subject to the following
5 provisions:

6 (1) The board shall be composed of two counselor
7 educators engaged in the teaching of counseling at an
8 accredited institution of higher education, three practic-
9 ing counselors and two persons chosen from the general
10 public. The five members of the board who are counselor
11 educators and practicing counselors must be licensed
12 pursuant to this article and have a minimum of three
13 years of experience except for the initial appointees who
14 must meet the qualifications provided in subdivision (2)
15 of this subsection.

16 (2) The initial appointees who are practicing counse-

17 lers must be persons who have been rendering counsel-
18 ing services for at least three years. The initial
19 appointees who are counselor educators must be persons
20 who have been teaching counseling at an accredited
21 institution of higher education for at least three years.
22 Each initial appointee shall commence serving a term
23 on the board on the first day of July, one thousand nine
24 hundred eighty-six. One initial appointee who is a
25 practicing counselor and one initial appointee who is
26 chosen from the general public shall serve terms of one
27 year; one initial appointee who is a practicing counselor
28 and one initial appointee who is a counselor educator
29 shall serve terms of two years; and the remaining initial
30 appointees shall serve terms of three years. Each
31 subsequent appointee shall commence serving a term of
32 five years on the board beginning on the first day of July
33 in the year of his or her appointment. No board member
34 may serve more than two consecutive full five-year
35 terms.

36 (3) On or before the first day of July, one thousand
37 nine hundred eighty-seven, and each year thereafter in
38 which the term of a member is to expire, the governor
39 shall appoint a qualified candidate for each vacancy on
40 the board occurring by reason of the expiration of a
41 term.

42 (4) Within sixty days of the occurrence of a vacancy
43 on the board which occurs for any reason other than the
44 expiration of a term, the governor shall appoint a
45 qualified candidate to serve the unexpired term of the
46 member whom he or she succeeds.

47 (c) Before entering upon the performance of his or her
48 duties, each member of the board shall take the oath
49 required by section five, article IV of the constitution
50 of this state. No member of the board may be removed
51 from office by the governor except for official miscon-
52 duct, malfeasance in office, incompetence, neglect of
53 duty or gross immorality, and then only in the manner
54 prescribed by law for the removal by the governor of
55 state elective officers.

56 (d) On the second Monday in July, one thousand nine

57 hundred eighty-six, the board shall hold its first annual
58 business meeting to elect a chairperson and secretary
59 from its membership, organize the affairs of the board
60 and transact such other business as may come before it.
61 Such meeting shall be called at a time and place in this
62 state designated by an appointee named by the governor
63 as a temporary chairperson to serve until a chairperson
64 is elected. The board shall hold an annual business
65 meeting at the call of the chairperson in July, one
66 thousand nine hundred eighty-seven, and in each year
67 thereafter, to elect a chairperson and secretary and
68 transact such other business as may come before it.
69 Additional meetings may be held at the call of the
70 chairperson or at the written request of any three
71 members. Four members of the board constitute a
72 quorum. Each member of the board shall receive per
73 diem compensation of fifty dollars for each day actually
74 engaged in the duties of his or her office and reimbur-
75 sement for all reasonable and necessary expenses
76 actually incurred in the performance of his or her duties
77 as a member of the board.

§30-31-5. Powers and duties of board; disposition of board funds.

1 (a) In addition to the duties set forth elsewhere in this
2 article, the board shall:

3 (1) Issue, renew, deny, suspend or revoke licenses to
4 engage in the practice of counseling and place a licensed
5 counselor on probation in accordance with the provisions
6 of this article and, in accordance with the administra-
7 tive procedures hereinafter provided, may review,
8 affirm, reverse, vacate or modify its order with respect
9 to any such denial, suspension or revocation;

10 (2) Promulgate reasonable rules pursuant to article
11 three, chapter twenty-nine-a of this code, implementing
12 the provisions of this article and the powers and duties
13 conferred upon the board hereby including, but not
14 limited to, rules setting forth:

15 (i) Any and all specific master's and doctoral degree
16 programs considered to be equivalent to a master's or
17 doctoral degree program in counseling for purposes of

18 licensure under subdivision (4), subsection (a), section
19 seven of this article;

20 (ii) The nature of supervised professional experience
21 approved by the board for the purposes of licensure
22 under subdivision (4), subsection (a), section seven of this
23 article;

24 (iii) A code of ethics for licensed counselors patterned
25 after the codes of ethics of related professional groups;
26 and

27 (iv) Forms for license applications and license rene-
28 wal applications;

29 (3) Keep accurate and complete records of its proceed-
30 ings, certify the same as may be appropriate and submit
31 an annual report to the governor and the Legislature in
32 such form as the governor may require;

33 (4) Adopt an official seal to be affixed to all licenses
34 issued by board;

35 (5) Appoint an examiner to determine the eligibility
36 of applicants for a license to engage in the practice of
37 counseling;

38 (6) Employ, direct, discharge and define the duties of
39 any and all professional, clerical or other personnel
40 necessary to effectuate the provisions of this article;

41 (7) Take any other actions as may be reasonably
42 necessary to effectuate the provisions of this article; and

43 (8) Accept gifts, grants and donations from any source
44 for the purposes of or incidental to this article.

45 (b) All moneys paid to the board shall be accepted by
46 a person designated by the board and deposited by him
47 or her with the treasurer of the state and credited to
48 an account to be known as the "Board of Examiners in
49 Counseling Fund." The compensation and expenses of
50 members of the board and all other costs and expenses
51 incurred by the board in the administration of this
52 article shall be paid from the fund, and no part of the
53 state's general revenue fund may be expended for such
54 purpose.

§30-31-6. License required.

1 Beginning on the first day of July, one thousand nine
2 hundred eighty-seven, and thereafter, no person may
3 engage in, offer to engage in or hold himself or herself
4 out to the public as being engaged in the practice of
5 counseling unless such person is licensed or exempted
6 from licensing pursuant to this article.

§30-31-7. Qualifications of applicants for license; application fee.

1 (a) To be eligible for a license to engage in the
2 practice of counseling, an applicant must:

3 (1) Be a legal resident of the state of West Virginia;

4 (2) Satisfy the board that he or she is of good moral
5 character and merits the public trust, as evidenced:

6 (i) If the applicant has never been convicted of a
7 felony or a crime involving moral turpitude, by submit-
8 ting letters of recommendation from three persons not
9 related to the applicant and a sworn statement from the
10 applicant stating that he or she has never been convicted
11 of a felony or a crime involving moral turpitude; or

12 (ii) If the applicant has been convicted of a felony or
13 a crime involving moral turpitude, it is a rebuttable
14 presumption that the applicant is unfit for licensure
15 unless he or she submits competent evidence of suffi-
16 cient rehabilitation and present fitness to perform the
17 duties of a licensed professional counselor as may be
18 established by the production of (a) documentary
19 evidence including a copy of the relevant release or
20 discharge order, evidence showing compliance with all
21 conditions of probation or parole, evidence showing that
22 at least one year has elapsed since release or discharge
23 without subsequent conviction, and letters of reference
24 from three persons who have been in contact with the
25 applicant since his or her release or discharge, and (b)
26 any collateral evidence and testimony as may be
27 requested by the board which shows the nature and
28 seriousness of the crime, the circumstances relative to
29 the crime or crimes committed and any mitigating
30 circumstances or social conditions surrounding the

31 crime or crimes and any other evidence necessary for
32 the board to judge present fitness for licensure or
33 whether licensure will enhance the likelihood that the
34 applicant will commit the same or similar offenses;

35 (3) Not be an alcohol or drug abuser as these terms
36 are defined in section eleven, article one-a, chapter
37 twenty-seven of this code;

38 (4) Have earned a master's degree in an accredited
39 counseling program or in a field closely related to an
40 accredited counseling program as determined by the
41 board, or have received training equivalent to such
42 degree as may be determined by the board, and have
43 at least two years of supervised professional experience
44 in counseling of such a nature as shall be designated by
45 the board, including at least one year's experience after
46 earning an aforementioned master's degree or equival-
47 ent; or have earned a doctorate degree in an accredited
48 counseling program or in a field closely related to an
49 accredited counseling program as determined by the
50 board, or have received training equivalent to such
51 degree as may be determined by the board, and have
52 at least one year of supervised professional experience
53 in counseling of such a nature as shall be designated by
54 the board after earning an aforementioned doctorate
55 degree or equivalent; and

56 (5) Have passed a standardized national certification
57 examination in counseling approved by the board.

58 (b) The following persons are eligible for a license to
59 engage in the practice of counseling without having
60 passed a standardized national certification examination
61 in counseling:

62 (1) Any person who meets the qualifications set forth
63 in subdivisions (1) through (4), subsection (a) of this
64 section, and who makes an application to the board for
65 a license before the first day of July, one thousand nine
66 hundred eighty-seven;

67 (2) Any person who:

68 (i) Is a resident of or employed in this state on the
69 effective date of this article;

70 (ii) Makes an application for a license within twelve
71 months after the date all initial appointees to the board
72 commence serving their terms;

73 (iii) Meets the qualifications set forth in subdivisions
74 (1) through (3), subsection (a) of this section; and

75 (iv) Was in the practice of counseling for two years
76 of the five calendar years next preceding the effective
77 date of this article; or

78 (3) Any person who holds a license or certificate to
79 engage in the practice of counseling issued by any other
80 state, the qualifications for which license or certificate
81 are determined by the board to be at least as great as
82 those provided in this article.

83 (c) Every applicant must submit an application for a
84 license to practice counseling to the secretary of the
85 board in such manner, on such forms and containing
86 such information as the board may prescribe and pay
87 to the board a nonrefundable application fee of fifty
88 dollars.

**§30-31-8. Issuance of license; renewal of license; renewal
fee; information required in application for
renewal.**

1 (a) Whenever the board finds that an applicant meets
2 all of the qualifications of this article for a license to
3 engage in the practice of counseling, it shall forthwith
4 issue a license to the applicant. The board shall deny a
5 license to any applicant who does not meet all of the
6 qualifications.

7 (b) Every license to engage in the practice of counsel-
8 ing must be renewed biennially during the month of
9 July. To renew a license, a licensed professional
10 counselor must submit an application for renewal to the
11 secretary of the board on such forms as the board may
12 prescribe and pay to the board a renewal fee of twenty-
13 five dollars. Any license which is not so renewed shall
14 automatically lapse. Any license which has lapsed may
15 be renewed within two years of its expiration date by
16 payment to the board of the appropriate renewal fee for
17 each period or part thereof during which the license was

18 not renewed.

19 (c) Each application to renew a license shall contain
20 or be accompanied by evidence of continued professional
21 development in the practice of counseling as determined
22 by the board by rule promulgated in accordance with
23 the provisions of chapter twenty-nine-a of this code and
24 any such other reasonable information as the board may
25 consider appropriate.

§30-31-9. Suspension or revocation of license.

1 (a) The board may at any time upon its own motion,
2 and shall upon the written complaint of any person,
3 conduct an investigation to determine whether there are
4 any grounds for placing a licensed professional counse-
5 lor on probation or for the suspension or revocation of
6 a license issued under the provisions of this article.

7 (b) The board, upon the affirmative vote of at least
8 five of its members, shall place a licensed professional
9 counselor on probation, or suspend or revoke any license
10 when it finds that the holder thereof:

11 (1) Has been convicted of a felony or a crime involving
12 moral turpitude;

13 (2) Has used narcotic drugs, other controlled substan-
14 ces or alcohol to the extent that it affects his or her
15 professional competency;

16 (3) Is under a declaration of mental incompetence;

17 (4) Has obtained or attempted to obtain a license
18 issued under the provisions of this article by fraud, deceit
19 or willful misrepresentation;

20 (5) Has failed or refused to comply with the provisions
21 of this article or any rule promulgated by the board
22 hereunder or any order or final decision of the board;

23 (6) Has violated the current code of ethics adopted by
24 the board;

25 (7) Has impersonated another licensed professional
26 counselor; or

27 (8) Has allowed his or her name or license issued

28 under the provisions of this article to be used by or
29 transferred to any other person or persons to perform
30 counseling services.

31 (c) Any licensed professional counselor whose license
32 has been suspended or revoked or who has been placed
33 on probation pursuant to board action under the
34 provisions of subdivisions (1) or (2) of this subsection
35 may be reinstated upon a showing of competent evidence
36 of sufficient rehabilitation and present fitness to
37 perform the duties of a licensed professional counselor
38 as determined by the board.

§30-31-10. Procedures for hearing.

1 (a) Whenever the board denies an application for any
2 license or renewal of any license or suspends or revokes
3 any license or places any licensed professional counselor
4 on probation, it shall make and enter an order to that
5 effect and serve a copy thereof on the applicant or
6 licensed professional counselor, as the case may be, at
7 his or her last known address, by certified mail, return
8 receipt requested. The order shall state the grounds for
9 the action taken and shall require that any license
10 suspended or revoked thereby shall be returned to the
11 board by the holder within twenty days after receipt of
12 the copy of the order.

13 (b) Any person adversely affected by any such order
14 is entitled to a hearing thereon (as to all issues not
15 excluded from the definition of a "contested case" as set
16 forth in section one, article one, chapter twenty-nine-a
17 of this code) if, within twenty days after receipt of a copy
18 thereof, he or she files with the board a written demand
19 for a hearing. A demand for hearing shall operate
20 automatically to stay or suspend the execution of any
21 order placing a licensed professional counselor on
22 probation, suspending or revoking a license or denying
23 an application for a renewal license. The board may
24 require the person demanding the hearing to give
25 reasonable security for the costs thereof and if the
26 person does not substantially prevail at the hearing,
27 such security shall be forfeited or the costs shall be
28 assessed against him or her and may be collected by an

29 action at law or other proper remedy.

30 (c) Upon receipt of a written demand for a hearing,
31 the board shall set a time and place therefor not less
32 than ten and not more than thirty days thereafter. Any
33 scheduled hearing may be continued by the board upon
34 its own motion or for good cause shown by the person
35 demanding the hearing.

36 (d) All of the pertinent provisions of article five,
37 chapter twenty-nine-a of this code apply to and govern
38 the hearing and the administrative procedures in
39 connection with and following the hearing, with like
40 effect as if the provisions of said article five were set
41 forth in this section.

42 (e) Any such hearing shall be conducted by a quorum
43 of the board. For the purpose of conducting any such
44 hearing, any member of the board has the power and
45 authority to issue subpoenas and subpoenas duces tecum
46 which shall be issued and served within the time, for
47 the fees and shall be enforced, as specified in section one,
48 article five, chapter twenty-nine-a of this code and all
49 of the provisions of said section one dealing with
50 subpoenas and subpoenas duces tecum apply to subpo-
51 enas and subpoenas duces tecum issued for the purpose
52 of a hearing hereunder.

53 (f) At any such hearing the person who demanded the
54 same may represent himself or herself or be represented
55 by an attorney licensed to practice law in this state.
56 Upon request by the board, it shall be represented at
57 any such hearing by the attorney general or his or her
58 assistants without additional compensation.

59 (g) After any such hearing and consideration of all of
60 the testimony, evidence and record in the case, the board
61 shall render its decision in writing. The written decision
62 of the board shall be accompanied by findings of fact
63 and conclusions of law as specified in section three,
64 article five, chapter twenty-nine-a of this code. A copy
65 of the decision and accompanying findings and conclu-
66 sions shall be served by certified mail, return receipt
67 requested, upon the person demanding the hearing, and
68 his or her attorney of record, if any.

69 (h) The decision of the board is final unless reversed,
70 vacated or modified upon judicial review thereof in
71 accordance with the provisions of section eleven of this
72 article.

§30-31-11. Judicial review; appeal to supreme court of appeals; legal representation for board.

1 Any person adversely affected by a decision of the
2 board rendered after a hearing held in accordance with
3 the provisions of section ten of this article is entitled to
4 judicial review thereof. All of the pertinent provisions
5 of section four, article five, chapter twenty-nine-a of this
6 code apply to and govern such judicial review with the
7 effect as if the provisions of said section four were set
8 forth in this section.

9 The judgment of the circuit court is final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this
13 code.

14 Legal counsel and services for the board in all appeal
15 proceedings in any circuit court and the supreme court
16 of appeals shall be provided by the attorney general or
17 his or her assistants and in any circuit court by the
18 prosecuting attorney of the county as well, all without
19 additional compensation.

§30-31-12. Penalties.

1 Any person who violates any of the provisions of this
2 article, any of the reasonable rules promulgated
3 hereunder or any order or any final decision of the board
4 is guilty of a misdemeanor, and, upon conviction thereof,
5 shall be fined not more than five hundred dollars, or
6 imprisoned in the county jail not more than six months,
7 or both fined and imprisoned.

§30-31-13. Disclosure.

1 All information communicated to or acquired by a
2 licensed professional counselor while engaged in the
3 practice of counseling with a client is privileged
4 information and may not be disclosed by the counselor

5 except:

6 (a) With the written consent of the client, or in the
7 case of death or disability, with the written consent of
8 a personal representative or other person authorized to
9 sue or the beneficiary of any insurance policy on the
10 client's life, health or physical condition;

11 (b) When a communication reveals the contemplation
12 of an act dangerous to the client or others; or

13 (c) When the client, or his or her personal represen-
14 tative, waives the privilege by bringing charges against
15 the licensed professional counselor.

§30-31-14. Actions to enjoin violations.

1 Whenever it appears to the board that any person has
2 been or is violating or is about to violate any provision
3 of this article, any reasonable rule promulgated here-
4 under or any order or final decision of the board, the
5 board may apply in the name of the state to the circuit
6 court of the county in which the violation or violations
7 or any part thereof has occurred, is occurring or is about
8 to occur, or the judge thereof in vacation, for an
9 injunction against such person and any other persons
10 who have been, are or are about to be, involved in any
11 practices, acts or omissions, so in violation, enjoining
12 such person or persons from any such violation or
13 violations. The application may be made and prosecuted
14 to conclusion whether or not any such violation or
15 violations have resulted or result in prosecution or
16 conviction under the provisions of section twelve of this
17 article.

18 Upon application by the board, the circuit courts of
19 this state may by mandatory or prohibitory injunction
20 compel compliance with the provisions of this article,
21 the reasonable rules promulgated hereunder and all
22 orders and final decisions of the board. The court may
23 issue a temporary injunction in any case pending a
24 decision on the merits of any applicaiton filed.

25 The judgment of the circuit court upon any applica-
26 tion permitted by the provisions of this section shall be
27 final unless reversed, vacated or modified on appeal to

28 the supreme court of appeals. Any such appeal shall be
29 sought in the manner and within the time provided by
30 law for appeals from circuit courts in other civil actions.

31 The board shall be represented in all such proceedings
32 by the attorney general or his or her assistants and in
33 such proceedings in the circuit court by the prosecuting
34 attorneys of the several counties as well, all without
35 additional compensation.

§30-31-15. Termination of board.

1 The West Virginia board of examiners in counseling
2 shall be terminated pursuant to the provisions of article
3 ten, chapter four of this code on the first day of July,
4 one thousand nine hundred ninety-two, unless sooner
5 terminated or unless continued or reestablished pursu-
6 ant to that article.

CHAPTER 139

(S. B. 181—By Senators Tucker and Jarrell)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three, relating to permissible payment, at option of state employee and in lump sum amount, of the accrued and unused annual leave of such employee at conclusion of employment; definition; time for paying; and application in determining amount thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-3. **Optional payment to employee in lump sum amount for accrued and unused annual leave at conclusion of employment; application thereof.**

1 Every eligible employee, as defined in section one of
 2 this article, at the conclusion of such employee's active
 3 employment by resignation, death, retirement or other-
 4 wise, may be paid in lump sum amount, at their option,
 5 for their accrued and unused annual leave at the em-
 6 ployee's usual rate of pay at such time. Such lump sum
 7 payment shall be made by the time of what would have
 8 been the employee's next regular payday had his employ-
 9 ment continued; and in determining the amount of such
 10 annual leave entitlement, weekends, holidays or other
 11 periods of normal, noncountable time shall be excluded.

CHAPTER 140

(H. B. 1325—By Delegate Minard and Delegate McKinley)

[Passed February 25, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the public employees insurance board; duties of the board; and designation as corporate body.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§5-16-3. Public employee insurance board created and established; body corporate.

1 The West Virginia public employees insurance board
 2 is hereby created and established to provide group
 3 hospital and surgical insurance, group major medical
 4 insurance, and group life and accidental death insu-
 5 rance for all employees in the manner as hereinafter
 6 provided. The board shall constitute a body corporate.

7 All business of the board shall be transacted in the name
8 of the West Virginia public employees insurance board.

9 After having conducted a performance audit through
10 its joint committee on government operations, pursuant
11 to section nine, article ten, chapter four of this code, the
12 Legislature hereby finds and declares that the public
13 employees insurance board should be continued and
14 reestablished. Accordingly, notwithstanding the provi-
15 sions of section four, article ten, chapter four of this
16 code, the public employees insurance board shall
17 continue to exist until the first day of July, one thousand
18 nine hundred eighty-seven.

CHAPTER 141

(H. B. 1210—By Delegate Blatnik and Delegate Love)

[Passed March 6, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia public employees insurance act; providing for retirees to be eligible for and obtain health insurance coverage only, without being required to also take life insurance coverage, with classes of retirees heretofore established for rate structure purposes to continue; and providing for life insurance coverage, including optional life insurance, to be made available to all retirees upon their payment of the cost thereof, based upon actuarial experience.

Be it enacted by the Legislature of West Virginia:

That sections twelve and eighteen, 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 costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees.

§5-16-18. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

§5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees.

1 The board is hereby authorized to provide under any
2 contract or contracts entered into under the provisions
3 of this article that the costs of any such group hospital
4 and surgical insurance, group major medical insurance,
5 group life and accidental death insurance benefit plan
6 or plans may be paid by the employer and employee. In
7 addition, each employee shall be entitled to have his
8 spouse and dependents, as defined by the rules and
9 regulations of the board, included in any group hospital
10 and surgical insurance or group major medical insu-
11 rance coverage provided. The board shall adopt rules
12 and regulations according to chapter twenty-nine-a of
13 this code governing the discontinuance and resumption
14 of any employee's coverage for his spouse and
15 dependents.

16 Should a participating employee be terminated from
17 employment involuntarily or in reduction of work force,
18 the employee's insurance coverage provided under this
19 article shall continue for a period of three months at no
20 additional cost to the employee: *Provided*, That an

21 employee discharged for misconduct shall not be eligible
22 for extended benefits under this section: *Provided,*
23 *however,* That coverage may be extended up to the
24 maximum period of three months, while administrative
25 remedies contesting the charge of misconduct are
26 pursued: *Provided further,* That should the discharge for
27 misconduct be upheld, the full cost of the extended
28 coverage shall be reimbursed by the employee. If the
29 employee is again employed or recalled to active
30 employment within twelve months of his prior termina-
31 tion, he shall not be considered a new enrollee and shall
32 not be required to again contribute his share of the
33 premium cost, if he had already fully contributed such
34 share during the prior period of employment.

35 When a participating employee is compelled or
36 required by law to retire before reaching the age of
37 sixty-five, or when a participating employee voluntarily
38 retires as provided by law, that employee's accrued
39 annual leave and sick leave, if any, shall be credited
40 toward an extension of the insurance coverage provided
41 by this article, according to the following formulae:
42 Such insurance coverage for a retired employee shall
43 continue one additional month for every two days of
44 annual leave or sick leave, or both, which the employee
45 had accrued as of the effective date of his retirement.
46 For a retired employee, his spouse and dependents, such
47 insurance coverage shall continue one additional month
48 for every three days of annual leave or sick leave, or
49 both, which the employee had accrued as of the effective
50 date of his retirement.

51 Any employee who retired prior to the twenty-first of
52 April, one thousand nine hundred seventy-two, and who
53 also otherwise meets the conditions of the "retired
54 employee" definition in section two of this article, shall
55 be eligible for insurance coverage under the same terms
56 and provisions of this article. The premium cost for any
57 such coverage shall be borne by the retired employee
58 and the rates for such coverage shall accurately reflect
59 the total cost of such coverage and shall not be
60 subsidized by the rate structure for any other insurance
61 programs administered pursuant to the West Virginia

62 public employees insurance act.

63 All retirees under the provisions of this article,
64 including those defined in section two of this article;
65 those retiring prior to the twenty-first day of April, one
66 thousand nine hundred seventy-two; and those hereafter
67 retiring, shall be eligible for and permitted to obtain
68 health insurance coverage, upon payment of the full
69 premium cost thereof, separately, without also being
70 required to obtain any life insurance coverage he-
71 reunder: *Provided*, That any requirement heretofore
72 established to prevent the subsidizing of any separate
73 class by the rate structure of any other program
74 administered hereunder shall continue.

75 A surviving spouse and dependents of a deceased
76 employee, who was either an active or retired employee
77 just prior to such decease, shall be entitled to be
78 included in any group insurance coverage provided
79 under this article, and such spouse and dependents shall
80 bear the premium cost of such insurance coverage and
81 the rates for such coverage shall accurately reflect the
82 total cost of such coverage and shall not be subsidized
83 by any other insurance programs administered pursu-
84 ant to the West Virginia public employees insurance act.

85 In construing the provisions of this section or any
86 other provisions of this code, the Legislature declares
87 that it is not now nor has it ever been the Legislature's
88 intent that elected public officials be provided any sick
89 leave, annual leave or personal leave, and the enactment
90 of this section is based upon the fact and assumption
91 that no statutory or inherent authority exists extending
92 sick leave, annual leave or personal leave to elected
93 public officials and the very nature of such positions
94 preclude the arising or accumulation of such, so as to
95 be thereafter usable as premium paying credits for
96 which such officials may claim extended insurance
97 benefits.

**§5-16-18. Rules and regulations for administration of
article; eligibility of certain retired em-
ployees and dependents of deceased
members for coverage; employees on medical**

leave of absence entitled to coverage; life insurance.

1 The board shall promulgate such rules and regula-
2 tions as may be required for the effective administration
3 of the provisions of this article. All rules and regulations
4 of the board and all hearings held by the board shall
5 be promulgated and held in accordance with the
6 provisions of chapter twenty-nine-a of the code.

7 Such regulations shall provide that any employee of
8 the state who has been compelled or required by law to
9 retire before reaching the age of sixty-five years shall
10 be eligible to participate in the public employees' health
11 insurance program at his own expense for the cost of
12 coverage after any extended coverage to which he, his
13 spouse and dependents may be entitled by virtue of his
14 accrued annual leave or sick leave, pursuant to the
15 provisions of section twelve of this article, has expired.
16 The dependents of any deceased member shall be
17 entitled to continue their participation and coverage
18 upon payment of the total cost for such coverage. Any
19 employee who voluntarily retires, as provided by law,
20 shall be eligible to participate in the public employees'
21 health insurance program at his own expense for the
22 cost of coverage after any extended coverage to which
23 he, his spouse and dependents may be entitled by virtue
24 of his accrued annual leave or sick leave, pursuant to
25 the provisions of section twelve of this article, has
26 expired.

27 Any employee who is on a medical leave of absence,
28 approved by his employer, shall, subject to the following
29 provisions of this paragraph, be entitled to continue his
30 coverage until he returns to his employment, and such
31 employee and employer shall continue to pay their
32 proportionate share of premium costs as provided by
33 this article: *Provided*, That the employer shall be
34 obligated to pay its proportionate share of the premium
35 cost only for a period of one year: *Provided, however*,
36 That during the period of such leave of absence, the
37 employee shall, at least once each month, submit to the
38 employer the statement of a qualified physician certifying
39 that the employee is unable to return to work.

40 Any retiree, retiring heretofore or hereafter, shall be
 41 eligible to participate in the public employees' life
 42 insurance program, including the optional life insurance
 43 coverage as already available to active employees under
 44 this article, at his own expense for the cost of coverage,
 45 based upon actuarial experience; and the board shall
 46 prepare, by rule and regulation, for such participation
 47 and coverages under declining term insurance and
 48 optional additional coverage for such retirees.

CHAPTER 142

(Com. Sub. for H. B. 1560—By Delegate Leary and Delegate E. Martin)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to all state officials, officers and employees to be paid twice per month.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-1. State officials, officers and employees to be paid twice per month; effective date.

1 All full-time and part-time salaried and hourly
 2 officials, officers and employees of the state and the state
 3 board of regents shall be paid twice per month, and
 4 under the same procedures and in the same manner as
 5 the state auditor currently pays agencies on such basis;
 6 beginning the first day of July, one thousand nine
 7 hundred eighty-six. Nothing contained in this section is
 8 intended to increase or diminish the salary or wages of
 9 any official, officer or employee.

CHAPTER 143

(Com. Sub. for S. B. 367—By Mr. Tonkovich, Mr. President, and Senator Harman)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, nine and ten, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section one-a, relating to the West Virginia department of public safety rank restructure act; effective date; the appointment of commissioned officers; promotions and the establishment of a promotion evaluation board; the uniforms; and other activities of the department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

- §15-2-1a. West Virginia department of public safety rank restructure act.
- §15-2-4. Appointment of commissioned officers; noncommissioned officers, other members; temporary and permanent positions.
- §15-2-9. Promotions; promotion evaluation board to be established.
- §15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

§15-2-1a. West Virginia department of public safety rank restructure act.

1 There is hereby created, on and after the first day of July,
2 one thousand nine hundred eighty-seven, the "West
3 Virginia Department of Public Safety Rank Restructure
4 Act." The superintendent shall, only in the initial
5 implementation of the rank restructure act, promote
6 members without benefit or requirement of a promotion
7 evaluation board process as long as those advanced in rank
8 hold the present rank immediately preceding that rank to
9 which they are advanced in accordance with the new rank

10 structure, i.e., master or first sergeant shall be promoted to
11 second lieutenant; lieutenants shall be promoted to first
12 lieutenants; sergeants shall be promoted to master or first
13 sergeant; corporals shall be promoted to sergeant and
14 trooper first class shall be promoted to corporal so long as
15 persons promoted hold those ranks which are being
16 advanced by this act to the next higher rank.

**§15-2-4. Appointment of commissioned officers,
noncommissioned officers, other members;
temporary and permanent positions.**

1 The superintendent shall appoint, from the enlisted
2 membership of the department, a deputy superintendent
3 who shall hold the rank of lieutenant colonel and be next in
4 authority to the superintendent. The superintendent shall
5 appoint, from the enlisted membership of the department,
6 the number of other officers and members he deems
7 necessary to operate and maintain the executive offices,
8 training school, scientific laboratory, keep records relating
9 to crimes and criminals, coordinate traffic safety activities,
10 maintain a system of supplies and accounting and perform
11 other necessary services.

12 The ranks within the membership of the department shall
13 be colonel, lieutenant colonel, major, captain, lieutenant,
14 master sergeant, first sergeant, sergeant, corporal, trooper
15 first class or trooper. On and after the first day of July, one
16 thousand nine hundred eighty-seven, the rank of lieutenant
17 within the membership of the department shall be changed
18 to first lieutenant and second lieutenant. Each such
19 member while in uniform shall wear the insignia of rank as
20 provided by law and departmental regulations.

21 The superintendent may appoint from the membership of
22 the department eleven principal supervisors who shall
23 receive the compensation and hold the temporary rank of
24 lieutenant colonel, major or captain at the will and pleasure
25 of the superintendent. Such appointments shall be exempt
26 from any merit standards established by the promotion
27 evaluation board. Any person appointed to a temporary
28 rank under the provisions of this article shall retain his
29 permanent rank and shall remain eligible for promotion if
30 his permanent rank is below that of captain. Upon the
31 termination of a temporary appointment by the

32 superintendent, the member shall be entitled to the full
33 rights and privileges of his permanent rank and shall
34 remain eligible for subsequent appointment to a temporary
35 rank.

§15-2-9. Promotions; promotion evaluation board to be established.

1 The superintendent shall establish within the department
2 of public safety a promotion evaluation board, which shall
3 be representative of commissioned and noncommissioned
4 officers within the department. The promotion evaluation
5 board shall prescribe merit standards for promotion and
6 maintain lists of eligible candidates.

7 The superintendent shall promote a member to the
8 permanent rank of trooper first class, corporal, sergeant,
9 first sergeant, master sergeant or lieutenant, and, on and
10 after the first day of July, one thousand nine hundred
11 eighty-seven, second lieutenant or first lieutenant from
12 among the top three names on the current list of eligible
13 candidates established by the promotion evaluation board
14 for each rank.

§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

1 (a) The standard uniform to be used by the department
2 of public safety after the effective date of this article shall
3 be as follows: Forestry green blouse with West Virginia
4 state police emblem on sleeve; black shoulder strap, one-
5 inch black stripe around sleeve, four inches from end of
6 sleeve; forestry green breeches with one-inch black stripe
7 down the side; trousers (slacks) with one-inch black stripe
8 down the side for officers and clerks regularly enlisted in
9 the department; forestry green shirts with West Virginia
10 state police emblem on sleeve; black shoulder straps;
11 forestry green mackinaw with West Virginia state police
12 emblem on sleeve; black shoulder straps; one-inch black
13 stripe around sleeve four inches from end of sleeve;
14 campaign hat of olive drab color; black Sam Browne belt
15 with holster; black leggings and shoes; the officer's uniform

16 will have one and one-quarter inch black stripe around the
17 sleeve of blouse and mackinaw four inches from end of
18 sleeve circumposed with one-half inch gold braid, also
19 black collars on blouse, with two silver shoulder bars for
20 captains, one silver shoulder bar for first lieutenant, one
21 gold shoulder bar for second lieutenant. For
22 noncommissioned officers the uniform blouse and shirt will
23 have thereon black chevrons of the appropriate rank.

24 (b) The superintendent shall establish the weapons and
25 enforcement equipment which shall be authorized for use
26 by members of the department, and shall provide for
27 periodic inspection of such weapons and equipment. He
28 shall provide for the discipline of members using other than
29 authorized weapons and enforcement equipment.

30 (c) The superintendent shall provide the members of the
31 department with suitable arms and weapons, and, when he
32 deems it necessary, with suitably equipped automobiles,
33 motorcycles, watercraft, airplanes and other means of
34 conveyance, to be used by the department of public safety,
35 the governor, and other officers and executives in the
36 discretion of the governor, in times of flood, disaster, and
37 other emergencies, for traffic study and control, criminal
38 and safety work, and in other matters of official business.
39 He shall also provide the standard uniforms for all members
40 of the department, for officers, noncommissioned officers
41 and troopers herein provided for. All uniforms and all arms,
42 weapons and other property furnished the members of the
43 department by the state of West Virginia shall be and
44 remain the property of the state.

45 (d) The superintendent is authorized to purchase and
46 maintain on behalf of members group life insurance not to
47 exceed the amount of five thousand dollars on behalf of
48 each member.

49 (e) The superintendent is authorized to contract and
50 furnish at department expense medical and hospital
51 services for treatment of illness or injury of a member which
52 shall be determined by the superintendent to have been
53 incurred by such member while engaged in the performance
54 of duty and from causes beyond control of such members.

55 (f) The superintendent shall establish and maintain
56 local headquarters at such places in West Virginia as are in
57 his judgment suitable and proper to render the department

58 of public safety most efficient for the purpose of preserving
59 the peace, protecting property, preventing crime,
60 apprehending criminals and carrying into effect all other
61 provisions of this article. The superintendent shall provide,
62 by lease or otherwise, for housing and quarters for the
63 accommodation of the members of the department of public
64 safety, and shall provide all equipment and supplies
65 necessary for them to perform their duties.

CHAPTER 144

(Com. Sub. for H. B. 1271—By Delegate Shaffer and Delegate Farley)

[Passed February 27, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to department of public safety; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves; providing a six hundred dollar salary increase for members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 Members of the department shall receive annual
2 salaries pursuant to appropriation by the Legislature,
3 payable at least monthly as follows:

4 Any lieutenant colonel shall receive an annual salary
5 of thirty-two thousand one hundred dollars; any major
6 shall receive an annual salary of twenty-nine thousand

7 four hundred eighty-four dollars; any captain shall
8 receive an annual salary of twenty-seven thousand three
9 hundred seventy-two dollars; any lieutenant shall
10 receive an annual salary of twenty-five thousand eight
11 hundred dollars; any master sergeant or first sergeant
12 shall receive an annual salary of twenty-four thousand
13 two hundred twenty-eight dollars; any sergeant shall
14 receive an annual salary of twenty-two thousand six
15 hundred fifty-six dollars; any corporal shall receive an
16 annual salary of twenty-one thousand seventy-two
17 dollars; any trooper first class shall receive an annual
18 salary of nineteen thousand five hundred dollars; and
19 any newly enlisted trooper shall receive a salary of one
20 thousand four hundred five dollars monthly during the
21 period of his basic training, and upon the satisfactory
22 completion of such training and assignment to active
23 duty, each such trooper shall receive, during the
24 remainder of his first year's service, a salary of one
25 thousand five hundred fourteen dollars monthly. During
26 the second year of his service in the department, each
27 trooper shall receive an annual salary of eighteen
28 thousand five hundred fifty-two dollars; during the third
29 year of his service each such trooper shall receive an
30 annual salary of eighteen thousand eight hundred fifty-
31 two dollars; and during the fourth and fifth year of such
32 trooper's service and for each year thereafter, he shall
33 receive an annual salary of nineteen thousand ninety-
34 two dollars. Each member of the department whose
35 salary is fixed and specified herein shall receive and be
36 entitled to an increase in salary over that hereinbefore
37 set forth, for grade in rank, based on length of service,
38 including that heretofore and hereafter served with the
39 department as follows: At the end of five years of service
40 with the department, such member shall receive a
41 salary increase of three hundred dollars to be effective
42 during his next three years of service and a like increase
43 at three-year intervals thereafter, with such increases to
44 be cumulative.

45 In applying the foregoing salary schedule where
46 salary increases are provided for length of service,
47 members of the department in service at the time this
48 article becomes effective shall be given credit for prior

49 service and shall be paid such salaries as the same
50 length of service will entitle them to receive under the
51 provisions hereof.

52 The Legislature finds and declares that there is
53 litigation pending in the circuit court of Kanawha
54 County on the question whether members of the
55 department of public safety are covered by the provi-
56 sions of the state wage and hour law, article five-c,
57 chapter twenty-one of this code. The Legislature further
58 finds and declares that because of the unique duties of
59 members of the department, it is not appropriate to
60 apply said wage and hour provisions to them. Accord-
61 ingly, members of the department of public safety are
62 hereby excluded from the provisions of said wage and
63 hour law. The express exclusion hereby enacted shall
64 not be construed as any indication that such members
65 were or were not heretofore covered by said wage and
66 hour law.

67 In lieu of any overtime pay they might otherwise have
68 received under the wage and hour law, and in addition
69 to their salaries and increases for length of service,
70 members who have completed basic training may
71 receive supplemental pay as hereinafter provided.

72 The superintendent shall, within thirty days after the
73 effective date hereof, promulgate a rule or regulation to
74 establish the number of hours per month which shall
75 constitute the standard work month for the members of
76 the department. Such rule or regulation shall further
77 establish, on a graduated hourly basis, the criteria for
78 receipt of a portion or all of such supplemental payment
79 when hours are worked in excess of said standard work
80 month. Such rule or regulation shall be promulgated
81 pursuant to the provisions of chapter twenty-nine-a of
82 this code. The superintendent shall certify monthly to
83 the department's payroll officer the names of those
84 members who have worked in excess of the standard
85 work month and the amount of their entitlement to
86 supplemental payment.

87 The supplemental payment shall be in an amount
88 equal to one and one-half percent of the annual salary

89 of a trooper during his second year of service, not to
90 exceed two hundred twenty-five dollars monthly. The
91 superintendent and civilian employees of the depart-
92 ment shall not be eligible for any such supplemental
93 payments.

94 Each member of the department, except the superin-
95 tendent and civilian employees, shall execute, before
96 entering upon the discharge of his duties, a bond with
97 security in the sum of five thousand dollars payable to
98 the state of West Virginia, conditioned upon the faithful
99 performance of his duties, and such bond shall be
100 approved as to form by the attorney general and to
101 sufficiency by the governor.

102 Any member of the department who is called to
103 perform active duty for training or inactive duty
104 training in the national guard or any reserve component
105 of the armed forces of the United States annually shall
106 be granted upon request leave time not to exceed thirty
107 calendar days for the purpose of performing such active
108 duty for training or inactive duty training, and the time
109 so granted shall not be deducted from any leave
110 accumulated as a member of the department.

CHAPTER 145

(S. B. 278—By Mr. Tonkovich, Mr. President, and Senator Boettner)

[Passed February 25, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four-a, article two of said chapter; and to further amend said article by adding thereto a new section, designated section four-d; and to amend article three of said chapter by adding thereto a new section, designated section three-b, all relating generally to intrastate rail carriers and the powers, duties and authority of the public service commission with respect thereto; certain legislative purposes and policies with respect thereto; establishing procedures for the establishment of intrastate rail carrier

rate-making; providing for appeals from the public service commission to the interstate commerce commission; providing for open access to the tracks and facilities of rail carriers and establishing the criteria and conditions therefor; and limiting the conditions under which a rail carrier may discontinue or abandon use of rail trackage in this state.

Be it enacted by the Legislature of West Virginia:

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

Article

1. General Provisions.
2. Powers and Duties of Public Service Commission.
3. Duties and privileges of Public Utilities Subject to Regulations of Commission.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.

- 1 (a) It is the purpose and policy of the Legislature in
- 2 enacting this chapter to confer upon the public service
- 3 commission of this state the authority and duty to enforce
- 4 and regulate the practices, services and rates of public
- 5 utilities in order to:
 - 6 (1) Ensure fair and prompt regulation of public utilities
 - 7 in the interest of the using and consuming public;
 - 8 (2) Provide the availability of adequate, economical and
 - 9 reliable utility services throughout the state;
 - 10 (3) Encourage the well-planned development of utility
 - 11 resources in a manner consistent with state needs and in
 - 12 ways consistent with the productive use of the state's
 - 13 energy resources, such as coal;
 - 14 (4) Ensure that rates and charges for utility services are
 - 15 just, reasonable, applied without unjust discrimination or

16 preference, applied in a manner consistent with the
17 purposes and policies set forth in article two-a of this
18 chapter, and based primarily on the costs of providing these
19 services;

20 (5) Encourage energy conservation and the effective
21 and efficient management of regulated utility enterprises;
22 and

23 (6) Encourage and support open and competitive
24 marketing of rail carrier services by providing to all rail
25 carriers access to tracks as provided in section three-b,
26 article three of this chapter. It is the purpose of the
27 Legislature to remove artificial barriers to rail carrier
28 service, stimulate competition, stimulate the free flow of
29 goods and passengers throughout the state and promote the
30 expansion of the tourist industry, thereby improving the
31 economic condition of the state.

32 (b) The Legislature creates the public service
33 commission to exercise the legislative powers delegated to
34 it. The public service commission is charged with the
35 responsibility for appraising and balancing the interests of
36 current and future utility service customers, the general
37 interests of the state's economy and the interests of the
38 utilities subject to its jurisdiction in its deliberations and
39 decisions.

40 (c) The Legislature directs the public service
41 commission to identify, explore and consider the potential
42 benefits or risks associated with emerging and state-of-the-
43 art concepts in utility management, rate design and
44 conservation. The commission may conduct inquiries and
45 hold hearings regarding such concepts in order to provide
46 utilities subject to its jurisdiction and other interested
47 persons the opportunity to comment, and shall report to the
48 governor and the Legislature regarding its findings and
49 policies to each of these areas not later than the first day of
50 the regular session of the Legislature in the year one
51 thousand nine hundred eighty-five, and every two years
52 thereafter.

53 (d) It is legislative policy to ensure that the Legislature
54 and the general public become better informed regarding
55 the regulation of public utilities in this state and the
56 conduct of the business of the public service commission. To
57 aid in the achievement of this policy, the public service
58 commission annually shall present to the joint committee

59 on government and finance, created by article three,
60 chapter four of this code, or a subcommittee designated by
61 the joint committee, a management summary report which
62 describes in a concise manner:

63 (1) The major activities of the commission for the year
64 especially as such activities relate to the implementation of
65 the provisions of this chapter;

66 (2) Important policy decisions reached and initiatives
67 undertaken during the year;

68 (3) The current balance of supply and demand for
69 natural gas and electric utility services in the state and
70 forecast of the probable balance for the next ten years; and

71 (4) Other information considered by the commission to
72 be important including recommendations for statutory
73 reform and the reasons for such recommendations.

74 (e) In addition to any other studies and reports required
75 to be conducted and made by the public service commission
76 pursuant to any other provision of this section, the
77 commission shall study and initially report to the
78 Legislature no later than the first day of the regular session
79 of the Legislature in the year one thousand nine hundred
80 eighty, upon:

81 (1) The extent to which natural gas wells or wells
82 heretofore supplying gas utilities in this state have been
83 capped off or shut in; the number of such wells, their
84 probable extent of future production and the reasons given
85 and any justification for, capping off or shutting in such
86 wells, the reasons, if any, why persons engaged or
87 heretofore engaged in the development of gas wells in this
88 state or the Appalachian areas have been discouraged from
89 drilling, developing or selling the production of such wells
90 and whether there are fixed policies by any utility or group
91 of utilities to avoid the purchase of natural gas produced in
92 the Appalachian region of the United States generally and
93 in West Virginia specifically.

94 (2) The extent of the export and import of natural gas
95 utility supplies in West Virginia.

96 (3) The cumulative effect of the practices mentioned in
97 subdivisions (1) and (2) of this subsection upon rates
98 theretofore and hereafter charged gas utility customers in
99 West Virginia.

100 In carrying out the provisions of this section the
101 commission shall have jurisdiction over such persons,

102 whether public utilities or not, as may be in the opinion of
103 the commission necessary to the exercise of its mandate and
104 may compel attendance before it, take testimony under oath
105 and compel the production of papers or other documents.
106 Upon reasonable request by the commission, all other state
107 agencies shall cooperate with the commission in carrying
108 out the provisions and requirements of this subsection.

109 (f) No later than the first day of the regular session of the
110 Legislature in the year one thousand nine hundred eighty,
111 the public service commission shall submit to the
112 Legislature a plan for internal reorganization which plan
113 shall specifically address the following:

114 (1) A division within the public service commission
115 which shall include the office of the commissioners, the
116 hearing examiners and such support staff as may be
117 necessary to carry out the functions of decision making and
118 general supervision of the commission, which functions
119 shall not include advocacy in cases before the commission;

120 (2) The creation of a division which shall act as an
121 advocate for the position of and in the interest of all
122 customers;

123 (3) The means and procedures by which the division to
124 be created pursuant to the provisions of subdivision (2) of
125 this subsection shall protect the interests of each class of
126 customers and the means by which the commission will
127 assure that such division will be financially and
128 departmentally independent of the division created by
129 subdivision (1) of this subsection;

130 (4) The creation of a division within the public service
131 commission which shall assume the duties and
132 responsibilities now charged to the commissioners with
133 regard to motor carriers which division shall exist
134 separately from those divisions set out in subdivisions (1)
135 and (2) of this subsection and which shall relieve the
136 commissioners of all except minimal administrative
137 responsibilities as to motor carriers and which plan shall
138 provide for a hearing procedure to relieve the
139 commissioners from hearing motor carrier cases;

140 (5) Which members of the staff of the public service
141 commission shall be exempted from the salary schedules or
142 pay plan adopted by the civil service commission and
143 identify such staff members by job classification or
144 designation, together with the salary or salary ranges for

145 each such job classification or designation;

146 (6) The manner in which the commission will strengthen
147 its knowledge and independent capacity to analyze key
148 conditions and trends in the industries it regulates
149 extending from general industry analysis and supply-
150 demand forecasting to continuing and more thorough
151 scrutiny of the capacity planning, construction
152 management, operating performance and financial
153 condition of the major companies within these industries.

154 Such plan shall be based on the concept that each of the
155 divisions mentioned in subdivisions (1), (2) and (4) of this
156 subsection shall exist independently of the others and the
157 plan shall discourage ex parte communications between
158 them by such means as the commission shall direct,
159 including, but not limited to, separate clerical and
160 professional staffing for each division. Further, the public
161 service commission is directed to incorporate within the
162 said plan to the fullest extent possible the
163 recommendations presented to the subcommittee on the
164 public service commission of the joint committee on
165 government and finance in a final report dated February,
166 one thousand nine hundred seventy-nine, and entitled "A
167 Plan for Regulatory Reform and Management
168 Improvement."

169 The commission shall before the fifth day of January, one
170 thousand nine hundred eighty, adopt said plan by order,
171 which order shall promulgate the same as a rule of the
172 commission to be effective upon the date specified in said
173 order, which date shall be no later than the thirty-first day
174 of December, one thousand nine hundred eighty. Certified
175 copies of such order and rule shall be filed on the first day of
176 the regular session of the Legislature, one thousand nine
177 hundred eighty, by the chairman of the commission with the
178 clerk of each house of the Legislature, the governor and the
179 secretary of state. The chairman of the commission shall
180 also file with the office of the secretary of state the receipt of
181 the clerk of each house and of the governor, which receipt
182 shall evidence compliance with this section.

183 Upon the filing of a certified copy of such order and rule,
184 the clerk of each house of the Legislature shall report the
185 same to their respective houses and the presiding officer
186 thereof shall refer the same to appropriate standing
187 committee or committees.

188 Within the limits of funds appropriated therefor, the rule
189 of the public service commission shall be effective upon the
190 date specified in the order of the commission promulgating
191 it unless an alternative plan be adopted by general law or
192 unless the rule is disapproved by a concurrent resolution of
193 the Legislature adopted prior to adjournment sine die of the
194 regular session of the Legislature to be held in the year one
195 thousand nine hundred eighty: *Provided*, That if such rule
196 is approved in part and disapproved in part by a concurrent
197 resolution of the Legislature adopted prior to such
198 adjournment, such rule shall be effective to the extent and
199 only to the extent that the same is approved by such
200 concurrent resolution.

201 The rules promulgated and made effective pursuant to
202 this section shall be effective notwithstanding any other
203 provisions of this code for the promulgation of rules or
204 regulations.

205 (g) The public service commission is hereby directed to
206 cooperate with the joint committee on government and
207 finance of the Legislature in its review, examination and
208 study of the administrative operations and enforcement
209 record of the railroad safety division of the public service
210 commission and any similar studies.

211 (h) (1) The Legislature hereby finds that rates for
212 natural gas charged to customers of all classes have risen
213 dramatically in recent years to the extent that such
214 increases have adversely affected all customer classes. The
215 Legislature further finds that it must take action necessary
216 to mitigate the adverse consequences of these dramatic rate
217 increases.

218 (2) The Legislature further finds that the practices of
219 natural gas utilities in purchasing high-priced gas supplies,
220 in purchasing gas supplies from out-of-state sources when
221 West Virginia possesses abundant natural gas, and in
222 securing supplies, directly or indirectly by contractual
223 agreements including take-or-pay provisions, indefinite
224 price escalators, or most-favored nation clauses have
225 contributed to the dramatic increase in natural gas prices. It
226 is therefore the policy of the Legislature to discourage such
227 purchasing practices in order to protect all customer
228 classes.

229 (3) The Legislature further finds that it is in the best
230 interests of the citizens of West Virginia to encourage the

231 transportation of natural gas in intrastate commerce by
232 interstate or intrastate pipelines or by local distribution
233 companies in order to provide competition in the natural
234 gas industry and in order to provide natural gas to
235 consumers at the lowest possible price.

236 (i) The Legislature further finds that transactions
237 between utilities and affiliates are a contributing factor to
238 the increase in natural gas and electricity prices and tend to
239 confuse consideration of a proper rate of return calculation.
240 The Legislature therefore finds that it is imperative that the
241 public service commission have the opportunity to properly
242 study the issue of proper rate of return for lengthy periods
243 of time and to limit the return of a utility to a proper level
244 when compared to return or profit that affiliates earn on
245 transactions with sister utilities.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4a. Procedure for changing rates after July 30, 1981.

§24-2-4d. Procedures for intrastate rail carrier rate-making and complaints.

§24-2-4a. Procedure for changing rates after June 30, 1981.

1 After the thirtieth day of June, one thousand nine
2 hundred eighty-one, no public utility subject to this chapter
3 except those utilities subject to the provisions of section
4 four-b and section four-d of this article, shall change.
5 suspend or annul any rate, joint rate, charge, rental or
6 classification except after thirty days' notice to the
7 commission and the public, which notice shall plainly state
8 the changes proposed to be made in the schedule then in
9 force and the time when the changed rates or charges shall
10 go into effect; but the commission may enter an order
11 suspending the proposed rate as hereinafter provided. The
12 proposed changes shall be shown by printing new
13 schedules, or shall be plainly indicated upon the schedules
14 in force at the time, and kept open to public inspection:
15 *Provided*, That the commission may, in its discretion, and
16 for good cause shown, allow changes upon less time than the
17 notice herein specified, or may modify the requirements of
18 this section in respect to publishing, posting and filing of
19 tariffs, either by particular instructions or by general order.

20 Whenever there shall be filed with the commission any
21 schedule stating a change in the rates or charges, or joint
22 rates or charges, or stating a new individual or joint rate or

23 charge or joint classification or any new individual or joint
24 regulation or practice affecting any rate or charge, the
25 commission may either upon complaint or upon its own
26 initiative without complaint enter upon a hearing
27 concerning the propriety of such rate, charge,
28 classification, regulation or practice; and, if the
29 commission so orders, it may proceed without answer or
30 other form of pleading by the interested parties, but upon
31 reasonable notice, and, pending such hearing and the
32 decisions thereon, the commission, upon filing with such
33 schedule and delivering to the public utility affected
34 thereby a statement in writing of its reasons for such
35 suspension, may suspend the operation of such schedule
36 and defer the use of such rate, charge, classification,
37 regulation or practice, but not for a longer period than two
38 hundred seventy days beyond the time when such rate,
39 charge, classification, regulation or practice would
40 otherwise go into effect; and after full hearing, whether
41 completed before or after the rate, charge, classification,
42 regulation or practice goes into effect, the commission may
43 make such order in reference to such rate, charge,
44 classification, regulation or practice as would be proper in a
45 proceeding initiated after the rate, charge, classification,
46 regulation or practice had become effective: *Provided*, That
47 in the case of a public utility having two thousand five
48 hundred customers or less and which is not principally
49 owned by any other public utility corporation or public
50 utility holding corporation, the commission may suspend
51 the operation of such schedule and defer the use of such
52 rate, charge, classification, regulation or practice, but not
53 for a longer period than one hundred twenty days beyond
54 the time when such rate, charge, classification, regulation
55 or practice would otherwise go into effect; and in the case of
56 a public utility having more than two thousand five
57 hundred customers, but not more than five thousand
58 customers, and which is not principally owned by any other
59 public utility corporation or public utility holding
60 corporation, the commission may suspend the operation of
61 such schedule and defer the use of such rate, charge,
62 classification, regulation or practice, but not for a longer
63 period than one hundred fifty days beyond the time when
64 such rate, charge, classification, regulation or practice
65 would otherwise go into effect; and in the case of a public

66 utility having more than five thousand customers, but not
67 more than seven thousand five hundred customers, and
68 which is not principally owned by any other public utility
69 corporation or public utility holding corporation, the
70 commission may suspend the operation of such schedule
71 and defer the use of such rate, charge, classification,
72 regulation or practice, but not for a longer period than one
73 hundred eighty days beyond the time when such rate,
74 charge, classification, regulation or practice would
75 otherwise go into effect; and after full hearing, whether
76 completed before or after the rate, charge, classification,
77 regulation or practice goes into effect, the commission may
78 make such order in reference to such rate, charge,
79 classification, regulation or practice as would be proper in a
80 proceeding initiated after the rate, charge, classification,
81 regulation or practice had become effective: *Provided,*
82 *however,* That if any such hearing and decision thereon is
83 not concluded within the periods of suspension, as above
84 stated, such rate, charge, classification, regulation or
85 practice shall go into effect at the end of such period not
86 subject to refund: *Provided further,* That if any such rate,
87 charge, classification, regulation or practice goes into effect
88 because of the failure of the commission to reach a decision,
89 the same shall not preclude the commission from rendering
90 a decision with respect thereto which would disapprove,
91 reduce or modify any such proposed rate, charge,
92 classification, regulation or practice, in whole or in part,
93 but any such disapproval, reduction or modification shall
94 not be deemed to require a refund to the customers of such
95 utility as to any rate, charge, classification, regulation or
96 practice so disapproved, reduced or modified. The fact of
97 any rate, charge, classification, regulation or practice going
98 into effect by reason of the commission's failure to act
99 thereon shall not affect the commission's power and
100 authority to subsequently act with respect to any such
101 application or change in any rate, charge, classification,
102 regulation or practice. Any rate, charge, classification,
103 regulation or practice which shall be approved,
104 disapproved, modified or changed, in whole or in part, by
105 decision of the commission shall remain in effect as so
106 approved, disapproved, modified or changed during the
107 period or pendency of any subsequent hearing thereon or
108 appeal therefrom. Orders of the commission affecting rates,

109 charges, classifications, regulations or practices which
110 have gone into effect automatically at the end of the
111 suspension period are prospective in effect only.

112 At any hearing involving a rate sought to be increased or
113 involving the change of any rate, charge, classification,
114 regulation or practice, the burden of proof to show the
115 justness and reasonableness of the increased rate or
116 proposed increased rate, or the proposed change of rate,
117 charge, classification, regulation or practice shall be upon
118 the public utility making application for such change. The
119 commission shall, whenever practicable and within
120 budgetary constraints, conduct one or more public hearings
121 within the area served by the public utility making
122 application for such increase or change, for the purpose of
123 obtaining comments and evidence on the matter from local
124 ratepayers.

125 Each public utility subject to the provisions of this
126 section shall be required to establish, in a written report
127 which shall be incorporated into each general rate case
128 application, that it has thoroughly investigated and
129 considered the emerging and state-of-the-art concepts in
130 the utility management, rate design and conservation as
131 reported by the commission under subsection (c), section
132 one, article one of this chapter, as alternatives to, or in
133 mitigation of, any rate increase. The utility report shall
134 contain as to each concept considered the reasons for
135 adoption or rejection of each. When in any case pending
136 before the commission all evidence shall have been taken
137 and the hearing completed, the commission shall render a
138 decision in such case. The failure of the commission to
139 render a decision with respect to any such proposed change
140 in any such rate, charge, classification, regulation or
141 practice within the various time periods specified in this
142 section after the application therefor shall constitute
143 neglect of duty on the part of the commission and each
144 member thereof.

145 Where more than twenty members of the public are
146 affected by a proposed change in rates, it shall be a
147 sufficient notice to the public within the meaning of this
148 section if such notice is published as a Class II legal
149 advertisement in compliance with the provisions of article
150 three, chapter fifty-nine of this code, and the publication

151 area for such publication shall be the community where the
152 majority of the resident members of the public affected by
153 such change reside or, in case of nonresidents, have their
154 principal place of business within this state.

155 The commission may order rates into effect subject to
156 refund, plus interest in the discretion of the commission, in
157 cases in which the commission determines that a temporary
158 or interim rate increase is necessary for the utility to avoid
159 financial distress, or in which the costs upon which these
160 rates are based are subject to modification by the
161 commission or another regulatory commission and to
162 refund to the public utility. In such case the commission
163 may require such public utility to enter into a bond in an
164 amount deemed by the commission to be reasonable and
165 conditioned upon the refund to the persons or parties
166 entitled thereto of the amount of the excess if such rates so
167 put into effect are subsequently determined to be higher
168 than those finally fixed for such utility.

169 No utility may make application for a general rate
170 increase while another general rate application is pending
171 before the commission and not finally acted upon, except
172 pursuant to the provisions of the next preceding paragraph
173 of this section. The provisions of this paragraph shall not be
174 construed so as to prohibit any such rate application from
175 being made while a previous application which has been
176 finally acted upon by the commission is pending before or
177 upon appeal to the West Virginia supreme court of appeals.

**§24-2-4d. Procedures for intrastate rail carrier rate-making
and complaints.**

1 Inasmuch as the commission retains authority over
2 intrastate rail rates and complaints pursuant to 49 United
3 States Code §11501 and other federal law, and inasmuch as
4 the commission's procedures are subject to periodic review
5 and certification by the interstate commerce commission
6 for compliance with federal standards, the general rate-
7 making procedures set forth in section four-a, article two,
8 chapter twenty-four of this code, shall not be applied to
9 intrastate railroad rates. The commission shall promulgate
10 its rules and regulations for the government of intrastate
11 rail rates. Such rules shall contain notice requirements,
12 grounds for rate suspension and the permitted suspension

13 period, procedures for protest, standards for determining
14 market dominance and rate reasonableness, burdens of
15 proof, refund provisions, contract rate procedures and
16 trackage rights. These rules shall also contain procedures
17 for complaints and filing of contract rates. All final orders
18 of the commission concerning intrastate rail rates shall be
19 appealable to the interstate commerce commission in
20 conformance with federally established standards of
21 review.

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT
TO REGULATIONS OF COMMISSION.**

**§24-3-3b. Access to privately owned railroad track and
adjoining facilities.**

1 (a) The Legislature finds that article XI, section
2 nine of the West Virginia constitution declares railroads in
3 this state to be public highways free to all persons for the
4 transportation of their persons and property, under such
5 regulations as shall be prescribed by the Legislature. It is
6 the policy of this state to protect and promote the economic
7 well-being of its citizens and toward that end to assure the
8 availability of rail transportation services. It is the purpose
9 of this section to promote such vital goals by all available
10 means not in conflict with authority exercised by the
11 federal government in the area of rail transportation.

12 (b) Rail carriers owning rail tracks located within the
13 borders of this state shall provide open access to such
14 tracks, together with all reasonable, necessary and proper
15 operating facilities for the transportation of passengers and
16 goods to other rail carriers including private carriers
17 transporting their own goods: *Provided*, That where both
18 the accessed and accessing carrier are negotiating a
19 contract with any person for the transportation of
20 passengers or goods, the accessed carrier shall have the
21 right of first refusal on such contract. The accessed carrier
22 and the accessing carrier shall jointly agree upon a
23 reasonable fee for such access. If the parties cannot reach an
24 agreement on a reasonable access fee, the public service
25 commission shall set a fee pursuant to the provisions of
26 subsection (c) of this section, after taking into consideration
27 the factors set forth in said subsection (c) and giving such
28 weight to each as it may deem appropriate.

29 (c) The commission shall promulgate regulations
30 providing for the establishment and payment of reasonable
31 access fees to the accessed carrier by the accessing carrier
32 and the orderly, efficient and safe utilization of accessed
33 rails and facilities. In establishing access fees, the
34 commission shall consider: The capital investment made by
35 the accessed carrier; a reasonable rate of return thereon;
36 depreciation; costs involved in track maintenance and
37 operation; the necessary use of the accessed carrier's
38 employees and facilities; any loss of employment or wages
39 by employees of the accessed carrier that might reasonably
40 be anticipated because of the activities of the accessing
41 carrier; other reasonable and necessary expenses incurred
42 by the accessed carrier; and the accessing carrier's usage of
43 the accessed track and facilities in relation to the total use
44 of such track and facilities.

45 (d) Except as required for safety and efficient
46 operation, no carrier providing access under this section
47 may require the use of its facilities by an accessing carrier.

48 (e) Rail carriers seeking access under this section shall
49 comply with all applicable interstate commerce
50 commission rules and regulations.

51 (f) All safety regulations of the federal railroad
52 administration are applicable to rail carriers seeking access
53 under this section, unless waived by the public service
54 commission.

55 (g) No rail carrier owning rail tracks in the state of West
56 Virginia shall discontinue or abandon use of such trackage
57 without first obtaining authority from the commission to do
58 so, unless the same be done under uniform rules and
59 regulations filed by such rail carrier with the public service
60 commission and approved by said commission.

CHAPTER 146

(H. B. 1301—By Delegate Minard and Delegate Hoblitzell)

[Passed February 25, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one,
chapter twenty-four of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to continuing the public service commission; number of commissioners; establishing qualifications for commissioners; grounds for removal; and setting salaries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as
3 provided by this chapter, chapter twenty-four-a and
4 chapter twenty-four-b. In addition, after having con-
5 ducted a performance audit through its joint committee
6 on government operations, pursuant to section nine,
7 article ten, chapter four of this code, the Legislature
8 hereby finds and declares that the public service
9 commission should be continued and reestablished.
10 Accordingly, notwithstanding the provisions of section
11 four, article ten, chapter four of this code, the public
12 service commission shall continue to exist until the first
13 day of July, one thousand nine hundred ninety-two. The
14 public service commission may sue and be sued by that
15 name. Such public service commission shall consist of
16 three members who shall be appointed by the governor
17 with the advice and consent of the Senate. The commis-
18 sioners shall be citizens and residents of this state and
19 at least one of them shall be duly licensed to practice
20 law in West Virginia, of not less than ten years' actual
21 experience at the bar. No more than two of said
22 commissioners shall be members of the same political
23 party. Each commissioner shall, before entering upon
24 the duties of his office, take and subscribe to the oath
25 provided by section five, article IV of the constitution,
26 which oath shall be filed in the office of the secretary
27 of state. The governor shall designate one of the
28 commissioners to serve as chairman at the governor's
29 will and pleasure. The chairman shall be the chief

30 administrative officer of the commission. The governor
31 may remove any commissioner only for incompetency,
32 neglect of duty, gross immorality, malfeasance in office
33 or violation of subsection (c) of this section.

34 (b) The unexpired term of members of the public
35 service commission at the time this subsection becomes
36 effective are continued through the thirtieth day of
37 June, one thousand nine hundred seventy-nine. In
38 accordance with the provisions of subsection (a) of this
39 section, the governor shall appoint three commissioners,
40 one for a term of two years, one for a term of four years
41 and one for a term of six years, all the terms beginning
42 on the first day of July, one thousand nine hundred
43 seventy-nine. All future appointments are for terms of
44 six years, except that an appointment to fill a vacancy
45 is for the unexpired term only. The commissioners
46 whose terms are terminated by the provisions of this
47 subsection are eligible for reappointment.

48 (c) No person while in the employ of, or holding any
49 official relation to, any public utility subject to the
50 provisions of this chapter, or holding any stocks or bonds
51 thereof, or who is pecuniarily interested therein, may
52 serve as a member of the commission or as an employee
53 thereof. Nor may any such commissioner be a candidate
54 for or hold public office, or be a member of any political
55 committee, while acting as such commissioner; nor may
56 any commissioner or employee of said commission
57 receive any pass, free transportation or other thing of
58 value, either directly or indirectly, from any public
59 utility or motor carrier subject to the provisions of this
60 chapter. In case any of the commissioners becomes a
61 candidate for any public office or a member of any
62 political committee, the governor shall remove him from
63 office and shall appoint a new commissioner to fill the
64 vacancy created.

65 (d) Effective the first day of July, one thousand nine
66 hundred eighty-four, and in light of the assignment of
67 new, substantial duties embracing new areas and fields
68 of activity under certain legislative enactments, each
69 commissioner shall receive a salary of thirty-nine
70 thousand two hundred forty dollars a year to be paid in

71 monthly installments from the special funds in such
72 amounts as follows:

73 (1) From the public service commission fund collected
74 under the provisions of section six, article three of this
75 chapter, thirty thousand two hundred ten dollars;

76 (2) From the public service commission motor carrier
77 fund collected under the provisions of section six, article
78 six, chapter twenty-four-a of this code, seven thousand
79 five hundred twenty-five dollars; and

80 (3) From the public service commission gas pipeline
81 safety fund collected under the provisions of section
82 three, article five, chapter twenty-four-b of this code,
83 one thousand five hundred five dollars.

84 In addition to this salary provided for all commission-
85 ers, the chairman of the commission shall receive three
86 thousand five hundred dollars a year to be paid in
87 monthly installments from the public service commis-
88 sion fund collected under the provisions of section six,
89 article three of this chapter, on and after the first day
90 of July, one thousand nine hundred eighty-four.

91 (e) Effective the first day of July, one thousand nine
92 hundred eighty-five, and in light of the assignment of
93 new, substantial additional duties embracing new areas
94 and fields of activity under certain legislative enact-
95 ments, each commissioner shall receive a salary of forty-
96 one thousand dollars a year to be paid in monthly
97 installments from the special funds in such amounts as
98 follows:

99 (1) From the public service commission fund collected
100 under the provisions of section six, article three of this
101 chapter, thirty-one thousand six hundred dollars;

102 (2) From the public service commission motor carrier
103 fund collected under the provisions of section six, article
104 six, chapter twenty-four-a of this code, seven thousand
105 nine hundred dollars; and

106 (3) From the public service commission gas pipeline
107 safety fund collected under the provisions of section
108 three, article five, chapter twenty-four-b of this code,

109 one thousand five hundred dollars.

110 In addition to this salary provided for all commission-
111 ers, the chairman of the commission shall receive three
112 thousand six hundred seventy-five dollars a year to be
113 paid in monthly installments from the public service
114 commission fund collected under the provisions of
115 section six, article three of this chapter, on and after the
116 first day of July, one thousand nine hundred eighty-five.

CHAPTER 147

(S. B. 302—By Senator Fanning)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the procedure for changing rates of electric, natural gas and telephone cooperatives and municipally operated public utilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4b. Procedures for changing rates of electric, natural gas, telephone cooperatives and municipally operated public utilities.

- 1 (a) Electric cooperatives, natural gas cooperatives,
- 2 telephone cooperatives and municipally operated public
- 3 utilities are not subject to the rate approval provisions of
- 4 section four or four-a of this article but are subject to the
- 5 limited rate provisions of this section.
- 6 (b) All rates and charges set by electric cooperatives,
- 7 natural gas cooperatives, telephone cooperatives and
- 8 municipally operated public utilities shall be just,

9 reasonable, applied without unjust discrimination or
10 preference and based primarily on the costs of providing
11 these services. Such rates and charges shall be adopted by
12 the electric, natural gas or telephone cooperative's
13 governing board and in the case of the municipally operated
14 public utility by municipal ordinance to be effective not
15 sooner than forty-five days after adoption: *Provided*, That
16 notice of intent to effect a rate change shall be specified on
17 the monthly billing statement of the customers of such
18 utility for the month next preceding the month in which the
19 rate change is to become effective or the utility shall give its
20 customers, and in the case of a cooperative, its customers,
21 members and stockholders, such other reasonable notices
22 as will allow filing of timely objections to such rate change.
23 Such rates and charges shall be filed with the commission
24 together with such information showing the basis of such
25 rates and charges and such other information as the
26 commission considers necessary. Any change in such rates
27 and charges with updated information shall be filed with
28 the commission. If a petition, as set out in subdivision (1), (2)
29 or (3), subsection (c) of this section, is received and the
30 electric cooperative, natural gas cooperative, telephone
31 cooperative, or municipality has failed to file with the
32 commission such rates and charges with such information
33 showing the basis of rates and charges and such other
34 information as the commission considers necessary, the
35 suspension period limitation of one hundred twenty days
36 and the one hundred day period limitation for issuance of
37 an order by a hearing examiner, as contained in subsections
38 (d) and (e) of this section, is tolled until the necessary
39 information is filed. The electric cooperative, natural gas
40 cooperative, telephone cooperative or municipality shall set
41 the date when any new rate or charge is to go into effect.

42 (c) The commission shall review and approve or modify
43 such rates upon the filing of a petition within thirty days of
44 the adoption of the ordinance or resolution changing said
45 rates or charges by:

46 (1) Any customer aggrieved by the changed rates or
47 charges who presents to the commission a petition signed by
48 not less than twenty-five percent of the customers served by
49 such municipally operated public utility, or twenty-five
50 percent of the membership of the electric, natural gas or
51 telephone cooperative residing within the state; or

52 (2) Any customer who is served by a municipally
53 operated public utility and who resides outside the
54 corporate limits and who is affected by the change in said
55 rates or charges and who presents to the commission a
56 petition alleging discrimination between customers within
57 and without the municipal boundaries. Said petition shall
58 be accompanied by evidence of discrimination; or

59 (3) Any customer or group of customers who are
60 affected by said change in rates who reside within the
61 municipal boundaries and who present a petition to the
62 commission alleging discrimination between said customer
63 or group of customers and other customers of the municipal
64 utility. Said petition shall be accompanied by evidence of
65 discrimination.

66 (d) (1) The filing of a petition with the commission
67 signed by not less than twenty-five percent of the customers
68 served by the municipally operated public utility, or
69 twenty-five percent of the membership of the electric,
70 natural gas or telephone cooperative residing within the
71 state, under subdivision (1), subsection (c) of this section,
72 shall suspend the adoption of the rate change contained in
73 the ordinance or resolution for a period of one hundred
74 twenty days from the date said rates or charges would
75 otherwise go into effect, or until an order is issued as
76 provided herein.

77 (2) Upon sufficient showing of discrimination by
78 customers outside the municipal boundaries, or a customer
79 or a group of customers within the municipal boundaries,
80 under a petition filed under subdivision (2) or (3),
81 subsection (c) of this section, the commission shall suspend
82 the adoption of the rate change contained in the ordinance
83 for a period of one hundred twenty days from the date said
84 rates or charges would otherwise go into effect or until an
85 order is issued as provided herein.

86 (e) The commission shall forthwith appoint a hearing
87 examiner from its staff to review the grievances raised by
88 the petitioners. Said hearing examiner shall conduct a
89 public hearing, and shall within one hundred days from the
90 date the said rates or charges would otherwise go into
91 effect, unless otherwise tolled as provided in subsection (b)
92 of this section, issue an order approving, disapproving or
93 modifying in whole or in part, the rates or charges imposed
94 by the electric, natural gas or telephone cooperative or by

95 the municipally operated public utility pursuant to this
96 section.

97 (f) Upon receipt of a petition for review of the rates
98 under the provisions of subsection (c) of this section, the
99 commission may exercise the power granted to it under the
100 provisions of section three of this article. The commission
101 may determine the method by which such rates are
102 reviewed and may grant and conduct a de novo hearing on
103 the matter if the customer, electric, natural gas or telephone
104 cooperative or municipality requests such a hearing.

105 (g) The commission may, upon petition by a
106 municipality or electric, natural gas or telephone
107 cooperative, allow an interim or emergency rate to take
108 effect, subject to future modification, if it is determined
109 that such interim or emergency rate is necessary to protect
110 the municipality from financial hardship and if that
111 financial hardship is attributable solely to the purchase of
112 the utility commodity sold. In such cases, the commission
113 may waive the forty-five-day waiting period provided for in
114 subsection (b) of this section and the one hundred twenty-
115 day suspension period provided for in subsection (d) of this
116 section.

117 (h) Notwithstanding any other provision, the
118 commission shall have no authority or responsibility with
119 regard to the regulation of rates, income, services or
120 contracts by municipally operated public utilities for
121 services which are transmitted and sold outside of the state
122 of West Virginia.

CHAPTER 148

(Com. Sub. for H. B. 1618—By Delegate Given and Delegate Hoblitzell)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections three, seven, nine, twelve and thirteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the real estate commission; commission created; setting forth the duties, composition, powers and qualifications for

membership of said commission; setting forth termination under sunset law; requiring the board to promulgate rules and regulations in accordance with legislative rule-making review authority; establishing licensing requirements for real estate brokers and salesmen; providing that individuals who fail examination on two occasions may be eligible to take the examination in three months; providing that persons so licensed are considered professionals in their trade; setting forth fees; removing prohibition that the commission may not revoke or refuse to issue or renew a license when a check is returned unpaid; providing for an administrative hearing; requiring such hearing to be conducted in accordance with the administrative procedures act; providing for appeal from an administrative ruling order or decision; removing automatic stay of order pending appeal; and providing that any stay from enforcement or supersedeas of such order is discretionary with the circuit court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESMEN.

- §47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive secretary and assistants; seal; admissibility of and inspection of records; termination of commission.
- §47-12-7. Written examinations required; exceptions; requirements for reissuance of revoked license; reexamination after failure; examination where applicant a partnership, etc.; issuance of license.
- §47-12-9. License fees; annual registration; fees for additional officers, charge for change of location and for duplicate or transfer of licenses.
- §47-12-12. Notice of hearing on complaint; conduct of hearing.
- §47-12-13. Appeals.
- §47-12-3. Commission created; powers generally; membership; appointment and removal of

members; qualifications; terms; organization; salaries and expenses; executive secretary and assistants; seal; admissibility of and inspection of records; termination of commission.

1 There shall be a commission known as the "West
2 Virginia Real Estate Commission," which commission
3 shall be a corporation and as such may sue and be sued,
4 may contract and be contracted with and shall have a
5 common seal. The commission shall consist of three
6 persons to be appointed by the governor by and with the
7 advice and consent of the Senate. Two of such appointees
8 each shall have been a resident and a citizen of this state
9 for at least six years prior to his or her appointment and
10 whose vocation for at least ten years shall have been that
11 of a real estate broker or real estate salesman and the
12 third shall be a representative of the public generally.
13 Members in office on the date this section becomes
14 effective shall continue in office until their respective
15 terms expire. The term of the members of said commis-
16 sion shall be for four years and until their successors are
17 appointed and qualify. No more than two members of
18 such commission shall belong to the same political party.
19 No member shall be a candidate for or hold any other
20 public office or be a member of any political committee
21 while acting as such commissioner. In case any commis-
22 sioner be a candidate for or hold any other public office
23 or be a member of any political committee, his office as
24 such commissioner shall ipso facto be vacated. Members
25 to fill vacancies shall be appointed by the governor for
26 the unexpired term. No member may be removed from
27 office by the governor except for official misconduct,
28 incompetency, neglect of duty, gross immorality or other
29 good cause shown and then only in the manner pres-
30 cribed by law for the removal by the governor of state
31 elective officers. The governor shall designate one
32 member of the commission as the chairman thereof and
33 the members shall choose one of the members thereof
34 as secretary. Two members of the commission shall
35 constitute a quorum for the conduct of official business.

36 (a) The commission shall do all things necessary and

37 convenient for carrying into effect the provisions of this
38 article and may from time to time promulgate reasona-
39 ble, fair and impartial rules and regulations in accor-
40 dance with the provisions of article three, chapter
41 twenty-nine-a of this code. Each member of the commis-
42 sion shall receive as full compensation for his services
43 the sum of one hundred dollars per day for each full day
44 actually spent on the work of the commission and his
45 actual and necessary expenses incurred in the perfor-
46 mance of duties pertaining to his office.

47 (b) The commission shall employ an executive secre-
48 tary and such clerks, investigators and assistants as it
49 shall deem necessary to discharge the duties imposed by
50 the provisions of this article and to effect its purposes,
51 and the commission shall determine the duties and fix
52 the compensation of such executive secretary, clerks,
53 investigators and assistants, subject to the general laws
54 of the state.

55 (c) The commission shall adopt a seal by which it shall
56 authenticate its proceedings. Copies of all records and
57 papers in the office of the commission, duly certified and
58 authenticated by the seal of said commission, shall be
59 received in evidence in all courts equally and with like
60 effect as the original. All records kept in the office of
61 the commission under authority of this article shall be
62 open to public inspection under reasonable rules and
63 regulations as shall be prescribed by the commission.

64 (d) The commission shall be terminated pursuant to
65 the provisions of article ten, chapter four of this code
66 on the first day of July, one thousand nine hundred
67 eighty-eight, unless sooner terminated or unless con-
68 tinued or reestablished pursuant to this article and
69 chapter.

**§47-12-7. Written examinations required; exceptions;
requirements for reissuance of revoked
license; reexamination after failure; exami-
nation where applicant a partnership, etc.;
issuance of license.**

1 In addition to proof of honesty, trustworthiness, good
2 character and good reputation of any applicant for a

3 license, the applicant shall submit to a written exam-
4 ination to be conducted by the commission which shall
5 include reading, writing, spelling, elementary arith-
6 metic, a general knowledge of the statutes of this state
7 relating to real property, deeds, mortgages, agreements
8 of sale, agency contract, leases, ethics, appraisals and
9 the provisions of this article: *Provided*, That any person
10 who has been actively engaged in the real estate
11 business as a real estate broker or real estate salesman
12 within the year preceding the effective date of this
13 article and is thus engaged in this state at the time this
14 article goes into effect, may secure a license as a real
15 estate broker or a salesman without an examination:
16 *Provided, however*, That such person shall make appli-
17 cation to the commission for registration within ninety
18 days after the effective date of this article. The
19 examination for a broker's license shall differ from the
20 examination for a salesman's license in that it shall be
21 of a more exacting nature and require higher standards
22 of knowledge of real estate. The commission shall
23 conduct examinations at such times and places as it
24 shall determine.

25 (a) In event the license of any real estate broker or
26 salesman shall be revoked by the commission, subse-
27 quent to the enactment of this article, no new license
28 shall be issued to such person unless he complies with
29 the provisions of this article.

30 (b) No person shall be permitted or authorized to act
31 as a real estate broker until he has qualified by
32 examination, except as hereinbefore provided. Any
33 individual who fails to pass the examination upon two
34 occasions shall be ineligible for a similar examination
35 until after the expiration of three months from the time
36 such individual took the last examination and then only
37 upon making application as in the first instance.

38 (c) If the applicant is a partnership, association or
39 corporation said examination shall be submitted to on
40 behalf of said partnership, association or corporation by
41 the member or officer thereof who is designated in the
42 application as the person to receive a license by virtue
43 of the issuing of a license to the partnership, association

44 or corporation.

45 (d) Upon satisfactorily passing such examination and
46 upon complying with all other provisions of law and
47 conditions of this article a license shall thereupon be
48 issued to the successful applicant and upon receiving
49 such license is authorized to conduct the business of a
50 real estate broker or real estate salesman in this state.
51 A person who has qualified for a real estate license as
52 provided above is considered to be a professional in his
53 trade.

**§47-12-9. License fees; annual registration; fees for
additional offices, charge for change of
location and for duplicate or transfer of
licenses.**

1 To pay for the maintenance and operation of the office
2 of the commission and the enforcement of this article,
3 the commission shall charge the following fees:

4 (a) Examination fee—twenty-five dollars, with no
5 additional fee for second examination.

6 (b) Investigation fee—ten dollars.

7 (c) Broker's license—fifty dollars.

8 (d) Salesperson's license—twenty-five dollars.

9 (e) Broker's renewal fee—fifty dollars, payable by the
10 thirtieth day of June of each year.

11 (f) Salesperson's renewal fee—twenty-five dollars,
12 payable by the thirtieth day of June of each year.

13 (g) Branch office fee—fifty dollars.

14 (h) Renewal of branch office license—five dollars.

15 (i) Transfer of salesperson's license—ten dollars.

16 (j) Duplicate license or certification—five dollars.

17 (k) Change of name—five dollars.

18 (l) Change of office—ten dollars.

19 Willful failure to pay any of the fees required under
20 this article is just cause for revocation of or refusal to

21 issue or renew a license.

§47-12-12. Notice of hearing on complaint; conduct of hearing.

1 Upon complaint initiated by the commission or filed
2 with it, the licensee shall be given ten days' written
3 notice of hearing upon the charges filed, together with
4 a copy of the complaint. This applicant or licensee shall
5 have an opportunity to be heard thereon in person, to
6 offer testimony in his behalf and to examine the
7 witnesses appearing in connection with the complaint.
8 The hearing shall be conducted in accordance with the
9 provisions of article five, chapter twenty-nine-a of this
10 code, and all rights, procedures and duties contained
11 therein shall be observed.

§47-12-13. Appeals.

1 Any applicant or licensee, or person aggrieved, shall
2 have the right of appeal from any adverse ruling, order,
3 or decision of the commission to the circuit court of the
4 county where the hearing was held, within thirty days
5 from the service of notice of the action of the commission
6 upon the parties in interest.

7 (a) Notice of appeal shall be filed in the office of the
8 clerk of the circuit court wherein the hearing was held,
9 who shall issue a writ of certiorari directed to the
10 commission, commanding it, within ten days after
11 service thereof, to certify to such court, its entire record
12 in the matter in which the appeal has been taken. The
13 appeal shall thereupon be heard, in due course, by said
14 court, which shall review the record and make its
15 determination of the cause between the parties.

16 (b) In the event an appeal is taken by a licensee or
17 applicant, such an appeal shall not stay enforcement of
18 the commission's order or decision or act as a superse-
19 deas thereof unless otherwise ordered by the circuit
20 court.

21 (c) Any person taking an appeal shall post a satisfac-
22 tory bond in the amount of two hundred dollars for the
23 payment of any costs which may be adjudged against
24 him.

- 25 (d) Appeal may be taken from the circuit court to the
26 supreme court of appeals by manner prescribed by law.

CHAPTER 149

(Com. Sub. for S. B. 248—By Senator B. Williams)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-two-b and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, thirteen, seventeen, twenty-three, twenty-four and twenty-six-h, article seven-a, chapter eighteen of said code, relating to the West Virginia public employees retirement act and the state teachers retirement system; deferred retirement and early retirement; supplemental benefits for certain annuitants; reemployment after retirement and option for holder of elected public office; definitions; membership in retirement system; cessation of membership; reinstatement of withdrawn service; statement and computation of teachers' service; withdrawal and death benefits; disposition of accumulated contributions upon cessation of membership; and supplemental benefits for certain annuitants.

Be it enacted by the Legislature of West Virginia:

That sections twenty-two-b and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, thirteen, seventeen, twenty-three, twenty-four and 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 RETIRE-
MENT ACT.

§5-10-22b. Supplemental benefits for certain annuitants.

§5-10-48. Reemployment after retirement; option for holder of elected public office.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of
2 less than seven thousand five hundred dollars annually on
3 the effective date of this section shall receive, upon
4 application, a supplemental benefit, prospectively, under
5 this section in any fiscal year for which the Legislature
6 provides by line item appropriation for the payment of such
7 benefit: *Provided*, That the effective date of retirement for
8 such annuitant was prior to the first day of July, one
9 thousand nine hundred seventy-nine, and he had ten years
10 or more of credited service at the time of such retirement.
11 For the purposes of this section, "effective date of
12 retirement" means the last day of actual employment, or the
13 last day carried on the payroll of the employer, whichever is
14 later, together with a meeting fully of all eligibility
15 requirements for retirement prior to the aforesaid effective
16 date. Any annuitant retired pursuant to the disability
17 provisions of this article shall be considered to have had ten
18 years or more credited service at the time of such
19 retirement.

20 Each such annuitant shall receive as his supplemental
21 benefit an increased annual amount which is the product of
22 the sum of eighteen dollars multiplied by his years of
23 credited service: *Provided*, That the total annuity of any
24 annuitant affected by the provisions of this section,
25 together with any of the other provisions of this article,
26 shall not exceed seven thousand five hundred dollars
27 annually.

28 Any annuitant receiving the supplemental benefit
29 provided for herein for the annuity payment period just
30 prior to the first day of July, one thousand nine hundred
31 eighty-five, or any annuitant made newly eligible for

32 receipt of such supplemental benefit on such date, shall
33 receive a nineteen percent increase in the amount of such
34 supplemental benefit prior received or newly calculated,
35 effective on and after the first day of July, one thousand
36 nine hundred eighty-five, and irrespective of the maximum
37 total annuity proviso and limitation of seven thousand five
38 hundred dollars annually. In any fiscal year in which pay
39 increases are granted by the Legislature to active public
40 employees, there may also be given an increase in
41 retirement benefits for retired public employees, if funding
42 is available for this purpose.

43 For the purpose of calculating the supplemental benefit
44 provided in this section, fractional parts of a service credit
45 year are to be disregarded unless in excess of one half of a
46 credited service year, in which event the same shall
47 constitute a full year of service credit.

48 On or after the first day of July, one thousand nine
49 hundred eighty-two, for the purpose of computation for
50 determination of eligibility and for the amount of any
51 supplemental benefit hereunder, separate computation
52 shall be made of a retirant's own benefit and that which
53 may be receivable as beneficiary of another, under the
54 provisions of this article, with each such benefit being
55 eligible for the supplemental benefit herein provided.

**§5-10-48. Reemployment after retirement; option for holder of
elected public office.**

1 (a) In the event a retirant becomes employed by a
2 participating public employer, payment of his or her
3 annuity shall be suspended during the period of his or her
4 reemployment and he or she shall become a contributing
5 member to the retirement system. If his or her
6 reemployment is for a period of one year or longer, his or her
7 annuity shall be recalculated and he or she shall be granted
8 an increased annuity due to such additional employment,
9 said annuity to be computed according to section twenty-
10 two of this article. A retirant may accept temporary
11 employment from a participating employer so long as he or
12 she does not receive compensation in excess of six thousand
13 dollars.

14 (b) In the event a retirant is elected to a public office or
15 appointed to hold an elected public office, he or she has the

16 option, notwithstanding subsection (a) of this section, to
17 either:

18 (1) Continue to receive payment of his or her annuity
19 while holding such public office, in addition to the salary he
20 or she may be entitled to as such officeholder; or

21 (2) Suspend the payment of his or her annuity and
22 become a contributing member of the retirement system as
23 provided in subsection (a) of this section.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

§18-7A-13. Membership in retirement system; cessation of membership;
reinstatement of withdrawn service.

§18-7A-17. Statement and computation of teachers' service.

§18-7A-23. Withdrawal and death benefits.

§18-7A-24. Disposition of accumulated contributions upon cessation of
membership.

§18-7A-26h. Supplemental benefits for certain annuitants.

§18-7A-3. Definitions.

1 "Teacher member" means the following persons, if
2 regularly employed for full-time service: (a) Any person
3 employed for instructional service in the public schools of
4 West Virginia; (b) principals; (c) public school librarians;
5 (d) superintendents of schools and assistant county
6 superintendents of schools; (e) any county school
7 attendance director holding a West Virginia teacher's
8 certificate; (f) the executive secretary of the retirement
9 board; (g) members of the research, extension,
10 administrative or library staffs of the public schools; (h) the
11 state superintendent of schools, heads and assistant heads
12 of the divisions under his supervision, or any other
13 employee thereunder performing services of an educational
14 nature; (i) employees of the state board of education who
15 are performing services of an educational nature; (j) any
16 person employed in a nonteaching capacity by the state
17 board of education, the West Virginia board of regents, any
18 county board of education, the state department of
19 education or the teachers retirement board, if such person
20 was formerly employed as a teacher in the public schools;
21 (k) all classroom teachers, principals and educational
22 administrators in schools under the supervision of the

23 department of corrections, the department of health or the
24 department of human services; and (l) employees of the
25 state board of school finance, if such person was formerly
26 employed as a teacher in the public schools.

27 "Nonteaching member" means any person, except a
28 teacher member, who is regularly employed for full-time
29 service by (a) any county board of education, (b) the state
30 board of education, (c) the West Virginia board of regents or
31 (d) the teachers retirement board.

32 "Members of the administrative staff of the public
33 schools" means deans of instruction, deans of men, deans of
34 women, and financial and administrative secretaries.

35 "Members of the extension staff of the public schools"
36 means every agricultural agent, boys' and girls' club agent,
37 and every member of the agricultural extension staff whose
38 work is not primarily stenographic, clerical or secretarial.

39 "Retirement system" means the state teachers retirement
40 system provided for in this article.

41 "Present teacher" means any person who was a teacher
42 within the thirty-five years beginning July one, one
43 thousand nine hundred thirty-four, and whose membership
44 in the retirement system is currently active.

45 "New entrant" means a teacher who is not a present
46 teacher.

47 "Regularly employed for full-time service" means
48 employment in a regular position or job throughout the
49 employment term regardless of the number of hours worked
50 or the method of pay.

51 "Employment term" means employment for at least ten
52 months, a month being defined as twenty employment days.

53 "Present member" means a present teacher who is a
54 member of the retirement system.

55 "Total service" means all service as a teacher while a
56 member of the retirement system since last becoming a
57 member and, in addition thereto, credit for prior service, if
58 any.

59 "Prior service" means all service as a teacher completed
60 prior to July first, one thousand nine hundred forty-one,
61 and all service of a present member who was employed as a
62 teacher, and did not contribute to a retirement account
63 because he was legally ineligible for membership during
64 such service.

65 "Average final salary" means the average of the five
66 highest fiscal year salaries earned as a member within the
67 last fifteen fiscal years of total service credit, including
68 military service as provided herein, or if total service is less
69 than fifteen years, the average annual salary for the period
70 on which contributions were made.

71 "Accumulated contributions" means all deposits and all
72 deductions from the earnable compensation of a
73 contributor minus the total of all supplemental fees
74 deducted from his compensation.

75 "Regular interest" means interest at three percent
76 compounded annually, or a higher earnable rate if
77 approved by the retirement board.

78 "Refund interest" means interest compounded annually
79 at a rate of three percent.

80 "Employer" means the agency of and within the state
81 which has employed or employs a member.

82 "Contributor" means a member of the retirement system
83 who has an account in the teachers accumulation fund.

84 "Beneficiary" means the recipient of annuity payments
85 made under the retirement system.

86 "Refund beneficiary" means the estate of a deceased
87 contributor, or such person as he shall have nominated as
88 beneficiary of his contributions by written designation duly
89 executed and filed with the retirement board.

90 "Earnable compensation" means the full compensation
91 actually received by members for service as teachers
92 whether or not a part of such compensation is received from
93 other funds, federal or otherwise, than those provided by
94 the state or its subdivisions. Allowances from employers for
95 maintenance of members shall be deemed a part of earnable
96 compensation for such members whose allowances were
97 approved by the teachers retirement board and
98 contributions to the teachers retirement system were made,
99 in accordance therewith, on or before the first day of July,
100 one thousand nine hundred eighty.

101 "Annuities" means the annual retirement payments for
102 life granted beneficiaries in accordance with this article.

103 "Member" means a member of the retirement system.

104 "Public schools" means all publicly supported schools,
105 including normal schools, colleges and universities in this
106 state.

107 "Deposit" means a voluntary payment to his account by a
108 member.

109 The masculine gender shall be construed so as to include
110 the feminine.

111 Age in excess of seventy years shall be deemed to be
112 seventy years.

**§18-7A-13. Membership in retirement system; cessation of
membership; reinstatement of withdrawn
service.**

1 The membership of the retirement system shall consist of
2 the following:

3 (a) New entrants, whose membership in the system shall
4 be compulsory upon employment as teachers and
5 nonteachers.

6 (b) The membership of the retirement system shall not
7 include any person who is an active member of or who has
8 been retired by the West Virginia public employees
9 retirement system, the judge's retirement system, or the
10 retirement system of the department of public safety or the
11 supplemental retirement system as provided in section
12 four-a, article twenty-three of this chapter.

13 The membership of any person in the retirement system
14 shall cease:

15 (1) Upon the withdrawal of accumulated contributions
16 after the cessation of service, or (2) upon retirement, or (3) at
17 death, or (4) if service amounts to fewer than five years in
18 any period of ten consecutive years.

19 Any former member of the retirement system who has
20 withdrawn accumulated contributions but subsequently
21 reenters the retirement system shall be permitted to repay
22 to the retirement fund the amount withdrawn, plus interest
23 at a rate of six percent, compounded annually from the date
24 of withdrawal to the date of repayment: *Provided*, That no
25 such repayment may be made until the former member has
26 completed two years of contributory service after reentry;
27 and such member shall be accorded all the rights to prior
28 service and experience as were held at the time of
29 withdrawal of such accumulated contributions: *Provided*,
30 *however*, That no withdrawn service may be reinstated that
31 has been transferred to another retirement system from
32 which the member is currently or will in the future draw

33 benefits based on the same service. The interest paid shall
34 be deposited in the reserve fund.

35 No member shall be eligible for prior service credit unless
36 he is eligible for prior service pension, as prescribed by
37 section twenty-two of this article; however, a new entrant
38 who becomes a present teacher as provided in this
39 paragraph shall be deemed eligible for prior service pension
40 upon retirement.

§18-7A-17. Statement and computation of teachers' service.

1 Under such rules and regulations as the retirement board
2 may adopt, each teacher shall file a detailed statement of his
3 length of service as a teacher for which he claims credit. The
4 retirement board shall determine what part of a year is the
5 equivalent of a year of service. In computing such service,
6 however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay,
8 nor shall it credit for more than one year of service
9 performed in any calendar year.

10 For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other
12 members of the retirement system for service in any of the
13 armed forces of the United States in any period of national
14 emergency within which a Federal Selective Service Act
15 was in effect. For purposes of this section, "armed forces"
16 shall include Women's Army Corps, Women's Appointed
17 Volunteers for Emergency Service, Army Nurse Corps,
18 Spars, Women's Reserve and other similar units officially
19 parts of the military service of the United States. Such
20 military service shall be deemed equivalent to public school
21 teaching, and the salary equivalent for each year of such
22 service shall be the actual salary of the member as a teacher
23 for his first year of teaching after discharge from military
24 service. Prior service credit for military service shall not
25 exceed ten years for any one member, nor shall it exceed
26 twenty-five percent of total service at the time of
27 retirement.

28 For service as a teacher in the employment of the federal
29 government, or a state or territory of the United States, or a
30 governmental subdivision of such state or territory, the
31 retirement board shall grant credit to the member:
32 *Provided*, That the member shall pay to the system double
33 the amount he contributed during the first full year of

34 current employment, times the number of years for which
35 credit is granted, plus interest at a rate to be determined by
36 the retirement board. Such interest shall be deposited in the
37 reserve fund and service credit so granted at the time of
38 retirement shall not exceed the lesser of ten years or fifty
39 percent of the member's total service as a teacher in West
40 Virginia. Any transfer of out-of-state service, as provided in
41 this article, shall not be used to establish eligibility for a
42 retirement allowance and the retirement board shall grant
43 credit for such transferred service as additional service
44 only: *Provided, however,* That a transfer of out-of-state
45 service shall be prohibited if such service is used to obtain a
46 retirement benefit from another retirement system:
47 *Provided further,* That salaries paid to members for service
48 prior to entrance into the retirement system shall not be
49 used to compute the average final salary of such member
50 under the retirement system.

51 Service credit for members or retired members shall not
52 be denied on the basis of minimum income regulations
53 promulgated by the teachers retirement board: *Provided,*
54 That the member or retired member shall pay to the system
55 the amount he would have contributed during the year or
56 years of public school service for which credit was denied as
57 a result of such minimum income regulations of the teachers
58 retirement board.

59 No members shall be deemed absent from service while
60 serving as a member or employee of the Legislature of the
61 state of West Virginia during any duly constituted session of
62 that body or while serving as an elected member of a county
63 commission during any duly constituted session of that
64 body: *Provided,* That the member makes contributions to
65 the system equal to what would have been contributed
66 during the period of absence had he performed his duties.

67 No member shall be deemed absent from service as a
68 teacher while serving on leave of absence as an officer with
69 a statewide professional teaching association, or who has
70 served in such capacity, and no retired teacher, who served
71 on such leave of absence while a member, shall be deemed to
72 have been absent from service as a teacher by reason of such
73 service on leave of absence: *Provided,* That the period of
74 service credit granted for such service on leave of absence
75 shall not exceed two years: *Provided, however,* That a

76 member or retired teacher who is serving or has served as an
77 officer of a statewide professional teaching association
78 shall make deposits to the teachers retirement board, for the
79 time of any such absence, in an amount double the amount
80 which he would have contributed in his regular assignment
81 for a like period of time.

82 The teachers retirement board shall grant service credit
83 to any former or present member of the West Virginia public
84 employees retirement system who has been a contributing
85 member for more than three years, for service previously
86 credited by the public employees retirement system, and (1)
87 shall require the transfer of the member's contributions to
88 the teachers retirement system or (2) shall require a
89 repayment of the amount withdrawn any time prior to the
90 member's retirement: *Provided*, That there shall be added
91 by the member to the amounts transferred or repaid under
92 this paragraph an amount which shall be sufficient to equal
93 the contributions he would have made had the member been
94 under the teachers retirement system during the period of
95 his membership in the public employees retirement system
96 plus interest at a rate of six percent compounded annually
97 from the date of withdrawal to the date of payment. The
98 interest paid shall be deposited in the reserve fund.

99 For service as a teacher in an elementary or secondary
100 parochial school, located within this state and fully
101 accredited by the West Virginia department of education,
102 the retirement board shall grant credit to the member:
103 *Provided*, That the member shall pay to the system double
104 the amount contributed during the first full year of current
105 employment, times the number of years for which credit is
106 granted, plus interest at a rate to be determined by the
107 retirement board. Such interest shall be deposited in the
108 reserve fund and service so granted at the time of retirement
109 shall not exceed the lesser of ten years or fifty percent of the
110 member's total service as a teacher in the West Virginia
111 public school system. Any transfer of parochial school
112 service, as provided in this section, may not be used to
113 establish eligibility for a retirement allowance and the
114 board shall grant credit for such transfer as additional
115 service only: *Provided, however*, That a transfer of
116 parochial school service is prohibited if such service is used

117 to obtain a retirement benefit from another retirement
118 system.

119 If a member is not eligible for prior service credit or
120 pension as provided in this article, then his prior service
121 shall not be deemed a part of his total service.

122 A member who withdrew from membership shall be
123 permitted to regain his former membership rights as
124 specified in section thirteen of this article only in case he
125 has served two years since his last withdrawal.

126 Subject to the above provisions, the board shall verify as
127 soon as practicable the statements of service submitted. The
128 retirement board shall issue prior service certificates to all
129 persons eligible therefor under the provisions of this article.
130 Such certificates shall state the length of such prior service
131 credit, but in no case shall the prior service credit exceed
132 forty years.

§18-7A-23. Withdrawal and death benefits.

1 Benefits upon withdrawal from service prior to
2 retirement under the provisions of this article shall be as
3 follows:

4 (a) A contributor who withdraws from service for any
5 cause other than death or retirement shall, upon
6 application, be paid his accumulated contributions plus
7 refund interest up to the end of the fiscal year preceding the
8 year in which application is made, but in no event shall
9 interest be paid beyond the end of five years following the
10 year in which the last contribution was made: *Provided*,
11 That such contributor, at the time of application, is then no
12 longer under contract, verbal or otherwise, to serve as a
13 teacher;

14 (b) If a contributor with fewer than five years of
15 established service does not apply for the refund of his
16 accumulated contributions within five years from the year
17 in which he quits service, then his accumulated
18 contributions plus refund interest, up to and including the
19 fifth year, shall be returned to such member or to his legal
20 representative; or

21 (c) If such contributor has completed twenty years of
22 total service, he may elect to receive at retirement age an
23 annuity which shall be computed as provided in this article:
24 *Provided*, That if such contributor has completed at least

25 five, but fewer than twenty years of total service in this
26 state, he may elect to receive at age sixty-two, an annuity
27 which shall be computed as provided in this article. The
28 contributor must notify the retirement board in writing
29 concerning such election. If such contributor has completed
30 fewer than five years of service in this state, he shall be
31 subject to the provisions as outlined in subsection (a) or (b)
32 above.

33 Benefits upon the death of a contributor prior to
34 retirement under the provisions of this article shall be paid
35 as follows:

36 (1) If the contributor was at least fifty years old, and if
37 his total service as a teacher was at least twenty-five years
38 at the time of his death, then the surviving spouse of the
39 deceased, provided said spouse is designated as the sole
40 refund beneficiary, shall be eligible for an annuity which
41 shall be computed as though the deceased were actually a
42 retired teacher at the time of death, and had selected a
43 survivorship option which pays such spouse the same
44 monthly amount which would have been received by the
45 deceased; or

46 (2) If the facts do not permit payment under the
47 preceding paragraph (1), then the following sum shall be
48 paid to the refund beneficiary of the contributor: His
49 accumulated contributions with refund interest up to the
50 year of his death plus the amount of his accumulated
51 contributions. The latter sum shall emanate from the
52 employer's accumulation fund.

**§18-7A-24. Disposition of accumulated contributions upon
cessation of membership.**

1 When a contributor ceases to be a member because of
2 absence from service as a teacher, his accumulated
3 contributions with refund interest up to and including the
4 fiscal year in which his membership ceased, shall be
5 returned to him, or to his legal representative. Five years
6 after cessation of membership, if the contributor or his legal
7 representative cannot be found, his accumulated
8 contributions with refund interest shall be forfeited to the
9 retirement system and credited to the reserve fund.

§18-7A-26h. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of

2 less than seven thousand five hundred dollars annually on
3 the effective date of this section shall receive a
4 supplemental benefit, prospectively, under this section in
5 any fiscal year for which the Legislature provides by line
6 item appropriation for the payment of such benefit:
7 *Provided*, That the effective date of retirement for such
8 annuitant was prior to the first day of July, one thousand
9 nine hundred seventy-nine, and he had ten years or more of
10 credited service at the time of such retirement. For the
11 purposes of this section, "effective date of retirement"
12 means the last day of actual employment, or the last day
13 carried on the payroll of the employer, whichever is later,
14 together with a meeting fully of all eligibility requirements
15 for retirement prior to the aforesaid effective date. Any
16 annuitant retired pursuant to the disability provisions of
17 this article shall be considered to have had ten years or more
18 credited service at the time of such retirement.

19 Each such annuitant shall receive as his supplemental
20 benefit an increased annual amount which is the product of
21 the sum of eighteen dollars multiplied by his years of
22 credited service: *Provided*, That the total annuity of any
23 annuitant affected by the provisions of this section,
24 together with any of the other provisions of this article,
25 shall not exceed seven thousand five hundred dollars
26 annually.

27 Any annuitant receiving the supplemental benefit
28 provided for herein for the annuity payment period just
29 prior to the first day of July, one thousand nine hundred
30 eighty-five, or any annuitant made newly eligible for
31 receipt of such supplemental benefit on such date, shall
32 receive a nineteen percent increase in the amount of such
33 supplemental benefit prior received or newly calculated,
34 effective on and after the first day of July, one thousand
35 nine hundred eighty-five, and irrespective of the maximum
36 total annuity proviso, and limitation of seven thousand five
37 hundred dollars annually. In any fiscal year in which pay
38 increases are granted by the Legislature to active teachers,
39 there may also be given an increase in retirement benefits
40 for retired teachers, if funding is available for this purpose

41 For the purpose of calculating the supplemental benefit
42 provided in this section, fractional parts of a service credit
43 year are to be disregarded unless in excess of one half of a

44 credited service year, in which event the same shall
45 constitute a full year of service credit.

46 On or after the first day of July, one thousand nine
47 hundred eighty-two, for the purpose of computation for
48 determination of eligibility and for the amount of any
49 supplemental benefit hereunder, separate computation
50 shall be made of a retirant's own benefit and that which
51 may be receivable as beneficiary of another, under the
52 provisions of this article, with each such benefit being
53 eligible for the supplemental benefit herein provided.

CHAPTER 150

(H. B. 2022—By Mr. Speaker, Mr. Albright, and Delegate Swann,
by request of the Executive)

[Passed March 7, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-c, relating to contributions paid on behalf of public employees who are members of the West Virginia public employees retirement system, the West Virginia department of public safety death, disability and retirement fund, the state teachers retirement system, the West Virginia board of regents retirement plans and the judges' retirement system; requiring the state and county boards of education to pick up and pay the contributions of its employees who are members of such retirement systems and authorizing other participating public employers to pick up and pay member contributions heretofore required to be deducted from the compensation of employees who participate in a West Virginia retirement system; stating a legislative purpose; providing for construction and effect of article; defining terms; authorizing a participating public employer to reduce the gross salary of member employees or offset future salary increases (or a combination of both) for the amount of member contributions paid by the participating public employers; providing

for member contributions paid by the participating public employer to not be included in gross income for federal or state income tax purposes or for purposes of employer withholding taxes; providing for member contributions paid by the participating employer to be treated by each retirement system or fund as member contributions; providing for retirement benefits to be calculated on the sum of gross salary plus member contributions paid by the participating public employer; stating legislative intent to create retirement plans that qualify under section 401 of the Internal Revenue Code of 1954, as amended, and for member contributions picked up and paid by participating public employers to qualify under subsection (h), section 414 of said Internal Revenue Code; and authorizing the boards of trustees to adopt a deferred compensation plan that qualifies under section 401 of the Internal Revenue Code of 1954, as amended.

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-c, all to read as follows:

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-1. Legislative purpose.

§5-10C-2. Construction and effect of article.

§5-10C-3. Definitions.

§5-10C-4. Pick-up of members' contributions by participating public employers.

§5-10C-5. Savings clause.

§5-10C-1. Legislative purpose.

- 1 The legislative purpose for this enactment is to enable
- 2 this state, its agencies and political subdivisions, and
- 3 political subdivisions of counties and municipalities to
- 4 pick-up and pay the contributions which their employees
- 5 are by law required to make to the respective retirement
- 6 system in which the public employee is a member.

§5-10C-2. Construction and effect of article.

1 This article shall apply to all retirement plans for
2 employees sponsored by any public employer in this
3 state. This article shall, on and after the first day of
4 July, one thousand nine hundred eighty-six, be read in
5 pari materia and harmonized with the provisions of this
6 code creating any retirement system for public em-
7 ployees.

§5-10C-3. Definitions.

1 The following words and phrases as used in this
2 article, unless a different meaning is clearly indicated
3 by the context, shall have the following meanings:

4 (1) "Accumulated contributions" means the sum of all
5 amounts credited to a member's individual account in
6 the members' deposit fund and includes both contribu-
7 tions deducted from the compensation of a member and
8 contributions of a member picked up and paid by the
9 member's participating public employer, plus applica-
10 ble interest thereon.

11 (2) "Board of trustees" means, as appropriate: The
12 board of trustees of the West Virginia public employees
13 retirement system created in article ten, chapter five of
14 this code; the retirement board of the West Virginia
15 department of public safety death, disability and
16 retirement fund created in section twenty-six, article
17 two, chapter fifteen of this code; the retirement board
18 of the state teachers and board of regents retirement
19 system created in article seven-a, chapter eighteen of
20 this code; the governing board of the board of regents
21 supplemental and additional retirement plans created in
22 section four-a, article twenty-three, chapter eighteen of
23 this code; or the retirement board of the judges'
24 retirement system created in article nine, chapter fifty-
25 one of this code.

26 (3) "Employee" means any person, whether appointed,
27 elected, or under contract, providing services for a
28 public employer, for which compensation is paid and
29 who is a member of the retirement system.

30 (4) "Member" means any employee who is included in
31 a retirement system.

32 (5) "Member contributions" means, as appropriate:
33 the contributions required by section twenty-nine,
34 article ten, chapter five of this code, from employees
35 who are members of the West Virginia public employees
36 retirement system; the contributions required by section
37 twenty-six, article two, chapter fifteen of this code, from
38 employees who are members of the West Virginia
39 department of public safety death, disability and
40 retirement fund; the contributions required by section
41 fourteen, article seven-a, chapter eighteen of this code,
42 from employees who are members of the state teachers
43 retirement system; the contributions authorized by
44 section fourteen-a, article seven-a, chapter eighteen or
45 by section four-a, article twenty-three, chapter eighteen,
46 from employees who are members of the West Virginia
47 board of regents retirement plans; or the contributions
48 required by section four, article nine, chapter fifty-one
49 of this code, from employees who are members of the
50 judges' retirement system.

51 (6) "Participating public employer" means the state of
52 West Virginia, any board, commission, department,
53 institution or spending unit, and shall include any
54 agency created by rule of the supreme court of appeals
55 having full-time employees, which for the purpose of
56 this article shall be deemed a department of state
57 government, and county boards of education with
58 respect to teachers employed by them; and any political
59 subdivision in the state which has elected to cover its
60 employees, as defined in this article, under the West
61 Virginia public employees retirement system.

62 (7) "Political subdivision" means the state of West
63 Virginia, a county, city or town in the state; a school
64 corporation or corporate unit; any separate corporation
65 or instrumentality established by one or more counties,
66 cities or towns, as permitted by law; any corporation or
67 instrumentality supported in most part by counties,
68 cities or towns; any public corporation charged by law
69 with the performance of a governmental function and
70 whose jurisdiction is coextensive with one or more
71 counties, cities or towns, any agency or organization
72 established by, or approved by the department of health

73 for the provision of community health or mental
74 retardation services, and which is supported in part by
75 state, county or municipal funds.

76 (8) "Retirement system" means, as appropriate: The
77 West Virginia public employees retirement system
78 created in article ten, chapter five of this code; the West
79 Virginia department of public safety death, disability
80 and retirement fund created in sections twenty-six
81 through thirty-eight, article two, chapter fifteen of this
82 code; the state teachers retirement system created in
83 article seven-a, chapter eighteen of this code; the West
84 Virginia board of regents retirement plans created in
85 section fourteen-a, article seven-a, chapter eighteen and
86 section four-a, article twenty-three, chapter eighteen of
87 this code; or the judges' retirement system created in
88 article nine, chapter fifty-one of this code.

89 (9) "Teacher" shall have the meaning ascribed to it in
90 section three, article seven-a, chapter eighteen of this
91 code.

**§5-10C-4. Pick-up of members' contributions by partici-
pating public employers.**

1 (a) The state of West Virginia for its public employees
2 and county board of education for its teachers shall pick-
3 up and pay the contributions which such employees are
4 required by law to make to the retirement system in
5 which they are a member for all compensation earned
6 by its member employees after the thirtieth day of June,
7 one thousand nine hundred eighty-six. Any other
8 political subdivision that is a participating public
9 employer in the West Virginia public employees
10 retirement system may, by a majority vote of its
11 governing body, elect to pick-up and pay the contribu-
12 tions of their employees required by section twenty-nine,
13 article ten of this chapter, for all compensation earned
14 by its member employees after the thirtieth day of June,
15 one thousand nine hundred eighty-six, or such later date
16 specified by the governing body. It shall be the duty of
17 the clerk or secretary of each such political subdivision
18 electing to pick-up and pay the employee contributions
19 of its members, to certify the determination of the

20 political subdivision to the board of trustees within ten
21 days from and after the vote of the governing body. Once
22 the governing body elects to pick up the contributions
23 of its member employees, it may not change its election.

24 (b) If the participating public employer does not pick-
25 up the contributions of its member employees, the
26 employer shall continue to deduct from the compensa-
27 tion paid to the member employee.

28 (c) If the participating public employer picks up and
29 pays the contributions of its member employees, such
30 contributions shall be treated as employer contributions
31 in determining the tax treatment thereof under article
32 twenty-one, chapter eleven of this code, and the federal
33 Internal Revenue Code of 1954, as amended, and such
34 contributions shall not be included in the gross income
35 of the employee in determining his or her tax treatment
36 under article twenty-one, chapter eleven of this code,
37 and the federal Internal Revenue Code of 1954, as
38 amended, until they are distributed or made available
39 to the employee or his or her beneficiary. The partic-
40 ipating public employer shall pay these employee
41 contributions from the same source of funds used in
42 paying compensation to the employee, by effecting an
43 equal cash reduction in the gross salary of the employee,
44 or by an off-set against future salary increases, or by
45 a combination of reduction in gross salary and off-set
46 against future salary increases.

47 (d) If employee contributions are picked up and paid
48 by the participating public employer, they shall be
49 treated by the board of trustees in the same manner and
50 to the same extent as employee contributions made prior
51 to the date on which employee contributions are picked
52 up by the participating public employer.

53 (e) The amount of employee contributions picked up
54 by the participating public employer shall be paid to the
55 retirement system in such manner and form, and in
56 such frequency, as the board of trustees may require,
57 and shall be accompanied by such supporting data, as
58 the board of trustees shall from time to time prescribe.
59 When paid to the retirement system, each of said

60 amounts shall be credited to the deposit fund account
61 of the member for whom the contribution was picked
62 up and paid by the participating public employer.

§5-10C-5. Savings clause.

1 In enacting this article, it is the intent of the
2 Legislature that the retirement plan created pursuant
3 to this article and article ten, chapter five; article two,
4 chapter fifteen; article seven-a, chapter eighteen and
5 article nine, chapter fifty-one of this code shall qualify
6 under section 401 of the Internal Revenue Code of 1954,
7 as amended, and that the member contributions picked
8 up by the participating public employer qualify under
9 subsection (h), section 414 of the Internal Revenue Code
10 of 1954, as amended. Should the United States Internal
11 Revenue Service not approve of certain sections or
12 phraseology of certain sections of this article as being
13 in compliance with the statutes or rules governing the
14 Internal Revenue Service, the respective boards of
15 trustees, in the adoption of the deferred compensation
16 plan, shall adopt such terminology with respect to such
17 sections as will comply therewith.

CHAPTER 151

(Com. Sub. for H. B. 1324—By Delegate Minard and Delegate McKinley)

[Passed March 4, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, four, seven and eight, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state building commission; legislative determination to continue, reestablish and extend the existence of such commission to a new, specified date, following conclusion of performance audit and fiscal audit thereon; altering and expanding the powers of the commission; providing for competitive bids being required on contracts exceeding five thousand dollars in amount; and providing for prior legislative approval, by enactment of general law, of any

project, construction or acquisition, in connection with which bonds would be issued by the commission, including the amount of bonds to be so issued, the purpose of the project, and the total cost thereof.

Be it enacted by the Legislature of West Virginia:

That sections one, four, seven and eight, article six, 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 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings.

§5-6-4. Powers of commission.

§5-6-7. Contracts with commission to be secured by bond; competitive bids required for contracts exceeding five thousand dollars.

§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirements and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings.

1 "The State Office Building Commission of West
2 Virginia," heretofore created, shall continue in existence
3 but on and after February nine, one thousand nine
4 hundred sixty-six, shall be known and designated as
5 "The State Building Commission of West Virginia" and
6 shall continue as a body corporate and as an agency of
7 the state of West Virginia. On and after the date
8 aforesaid, the commission shall consist of the governor,
9 attorney general, state treasurer and four additional
10 members to be appointed by the governor by and with
11 the advice and consent of the Senate. The terms of office
12 for said members to be appointed by the governor shall
13 be four years, except that the terms of office of the first
14 four members so appointed by the governor shall be for
15 one, two, three and four years respectively. No more
16 than three of such members so appointed by the
17 governor shall be members of the same political party,

18 nor shall any of said members be members or employees
19 of the executive, legislative or judicial branches of
20 government of West Virginia or any political subdivi-
21 sion thereof. The governor shall be chairman of the
22 commission. The secretary of state shall be a member
23 of the commission and serve as its secretary, but shall
24 not have the right to vote upon matters before the
25 commission. All members of the commission shall be
26 citizens and residents of this state. The members of the
27 commission shall be paid or reimbursed for their
28 necessary expenses incurred under this article, but shall
29 receive no compensation for their services as members
30 or officers of the commission: *Provided*, That each
31 member of the commission appointed by the governor
32 shall, in addition to such reimbursement for necessary
33 expenses receive a per diem of thirty-five dollars for
34 each day or substantial portion thereof that he is
35 engaged in the work of the commission. Such expenses
36 and per diem shall be paid solely from funds provided
37 under the authority of this article, and the commission
38 shall not proceed to exercise or carry out any authority
39 or power herein given it to bind said commission beyond
40 the extent to which money has been provided under the
41 authority of this article. On or before the fifteenth day
42 of each month, the commission shall prepare and
43 transmit to the president and minority leader of the
44 Senate and the speaker and the minority leader of the
45 House of Delegates a report covering the activities of the
46 said commission for the preceding calendar month.

47 After having conducted a performance and fiscal
48 audit through its joint committee on government
49 operations, pursuant to section nine, article ten, chapter
50 four of this code, the Legislature hereby finds and
51 declares that the state building commission should be
52 continued and reestablished. Accordingly, notwithstand-
53 ing the provisions of section four, article ten, chapter
54 four of this code, the state building commission shall
55 continue to exist until the first day of July, one thousand
56 nine hundred ninety-two.

§5-6-4. Powers of commission.

1 The commission shall have power:

- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the name
5 of the commission or of the state, by purchase, lease,
6 lease-purchase, or otherwise, real property or rights or
7 easements necessary or convenient for its corporate
8 purposes and to exercise the power of eminent domain
9 to accomplish such purposes;
- 10 (4) To acquire, hold and dispose of personal property
11 for its corporate purposes;
- 12 (5) To make bylaws for the management and regula-
13 tion of its affairs;
- 14 (6) With the consent of the attorney general of the
15 state of West Virginia, to use the facilities of his office,
16 assistants and employees in all legal matters relating to
17 or pertaining to the commission;
- 18 (7) To appoint officers, agents and employees, and fix
19 their compensation;
- 20 (8) To make contracts, and to execute all instruments
21 necessary or convenient to effectuate the intent of, and
22 to exercise the powers granted to it by, this article;
- 23 (9) To renegotiate all contracts entered into by it
24 whenever, due to a change in situation, it appears to the
25 commission that its interests will be best served;
- 26 (10) To construct a building or buildings on real
27 property, which it may acquire, or which may be owned
28 by the State of West Virginia, in the city of Charleston,
29 as convenient as may be to the capitol building, together
30 with incidental approaches, structures and facilities,
31 subject to such consent and approval of the city of
32 Charleston in any case as may be necessary; and, in
33 addition, to acquire or construct a warehouse, including
34 office space therein, in Kanawha county for the West
35 Virginia alcohol beverage control commissioner, and
36 equip and furnish the same; and to acquire or construct,
37 through lease, purchase, lease-purchase, or bond
38 financing, hospitals or other facilities, buildings, or
39 additions or renovations to buildings as may be neces-

40 sary for the safety and care of patients, inmates and
41 guests at facilities under the jurisdiction of and
42 supervision of the department of health and at institu-
43 tions under the jurisdiction of the department of
44 corrections; and to formulate and program plans for the
45 orderly and timely capital improvement of all of said
46 hospitals and institutions and the state capitol buildings;
47 and to construct a building or buildings in Kanawha
48 county to be used as a general headquarters by the
49 department of pubic safety to accommodate that
50 department's executive staff, clerical offices, technical
51 services, supply facilities and dormitory accommoda-
52 tions; and to develop, improve and expand state parks
53 and recreational facilities to be operated by the
54 department of natural resources; and to establish one or
55 more systems or complexes of buildings and projects
56 under control of the commission; and, subject to prior
57 agreements with holders of bonds previously issued, to
58 change the same from time to time, in order to facilitate
59 the issuance and sale of bonds of different series on a
60 parity with each other or having such priorities between
61 series as the commission may determine; and to acquire
62 by purchase, eminent domain or otherwise all real
63 property or interests therein necessary or convenient to
64 accomplish the purposes of this subdivision;

65 (11) To maintain, construct and operate a project
66 authorized hereunder;

67 (12) To charge rentals for the use of all or any part
68 of a project or buildings at any time financed, con-
69 structed, acquired or improved in whole or in part with
70 the proceeds of sale of bonds issued pursuant to this
71 article, subject to and in accordance with such agree-
72 ments with bondholders as may be made as hereinafter
73 provided;

74 (13) To issue negotiable bonds and to provide for the
75 rights of the holders thereof;

76 (14) To accept and expend any gift, grant or contri-
77 bution of money to, or for the benefit of, the commission,
78 from the state of West Virginia or any other source for
79 any or all of the purposes specified in this article or for

80 any one or more of such purposes as may be specified
81 in connection with such gift, grant or contribution;

82 (15) To enter on any lands and premises for the
83 purpose of making surveys, soundings and
84 examinations;

85 (16) To invest in United States government obliga-
86 tions, on a short-term basis, any surplus funds which the
87 commission may have on hand pending the completion
88 of any project or projects; and

89 (17) To do all things necessary or convenient to carry
90 out the powers given in this article.

91 The rights and powers set forth in subdivision (10) of
92 this section shall not be construed as in derogation of
93 any rights and powers now vested in the West Virginia
94 alcohol beverage control commissioner, the department
95 of mental health, the commissioner of public institutions
96 or the department of natural resources.

**§5-6-7. Contracts with commission to be secured by bond;
competitive bids required for contracts ex-
ceeding five thousand dollars.**

1 The commission shall construct a project pursuant to
2 a contract or contracts. Every such contract shall be
3 secured by a bond meeting the requirements of section
4 thirty-nine, article two, chapter thirty-eight of this code.

5 No contract or contracts for the construction, remo-
6 deling, renovation or repair of any building or buildings
7 or any approaches, structures or facilities incidental
8 thereto, or for the equipping and furnishing of any
9 building or buildings, when the anticipated expenditure
10 therefor will exceed the sum of five thousand dollars,
11 shall be entered into except upon the basis of compet-
12 itive sealed bids. Such bids shall be obtained by public
13 notice soliciting such bids published as a Class II legal
14 advertisement in compliance with the provisions of
15 article three, chapter fifty-nine of this code, and the
16 publication area for such publication shall be the county
17 in which any such contract is to be performed. The
18 publication shall be completed at least fourteen days
19 prior to the final date for the submission of bids. The

20 commission may in addition to such publication also
21 solicit sealed bids by sending requests by mail to
22 prospective bidders. The contract shall be awarded to
23 the lowest responsible bidder, unless any and all bids
24 are rejected, in which event new bids shall be sought
25 by again publishing notice as aforesaid. Any bid, with
26 the name of the bidder, shall be entered on a record and
27 each record, with the successful bid indicated thereon,
28 shall, after the award of any contract, be open to public
29 inspection in the office of the secretary of the commis-
30 sion.

**§5-6-8. Commission empowered to issue state building
revenue bonds after legislative authorization;
form and requirements for bonds; procedure
for issuance; temporary bonds; funds, grants
and gifts.**

1 The commission is hereby empowered to raise the cost
2 of a project, as defined in this article, by the issuance
3 of state building revenue bonds of the state, the
4 principal of and interest on which bonds shall be
5 payable solely from the special fund herein provided for
6 such payment. Subject to the proceedings pursuant to
7 which any bonds outstanding were authorized and
8 issued pursuant to this article, the commission shall
9 pledge the moneys in such special fund, except such part
10 of the proceeds of sale of any bonds to be used to pay
11 the cost of a project, for the payment of the principal
12 of and interest on bonds issued pursuant to this article,
13 such pledge to apply equally and ratably to separate
14 series of bonds or upon such priorities as the commission
15 shall determine. Such bonds shall be authorized by
16 resolution of the commission which shall recite an
17 estimate by the commission of such cost, and shall
18 provide for the issuance of bonds in an amount suffi-
19 cient, when sold as hereinafter provided, to produce
20 such cost, less the amount of any funds, grant or grants,
21 gift or gifts, contribution or contributions received, or
22 in the opinion of the commission expected to be received,
23 from the United States of America or from any other
24 source. The acceptance by the commission of any and all
25 such funds, grants, gifts and contributions, whether in

26 money or in land, labor or materials, is hereby expressly
27 authorized. All such bonds shall have and are hereby
28 declared to have all the qualities of negotiable instru-
29 ments. Such bonds shall bear interest at not more than
30 twelve percent per annum, payable semiannually, and
31 shall mature in not more than forty years from their
32 date or dates, and may be made redeemable at the
33 option of the state, to be exercised by the commission,
34 at such price and under such terms and conditions, all
35 as the commission may fix prior to the issuance of such
36 bonds. The commission shall determine the form of such
37 bonds, including coupons, if any, to be attached thereto
38 to evidence the right of interest payments, which bonds
39 shall be signed by the chairman and secretary of the
40 commission, under the great seal of the state, attested
41 by the secretary of state, and the coupons, if any,
42 attached thereto shall bear the facsimile signature of the
43 chairman of the commission. In case any of the officers
44 whose signatures appear on the bonds or coupons issued
45 as hereinbefore authorized shall cease to be such officers
46 before the delivery of such bonds, such signatures shall
47 nevertheless be valid and sufficient for all purposes the
48 same as if they had remained in office until such
49 delivery. The commission shall fix the denominations of
50 such bonds, the principal and interest of which shall be
51 payable at the office of the treasurer of the state of West
52 Virginia, at the capitol of the state, or, at the option of
53 the holder, at some bank or trust company within or
54 without the state of West Virginia to be named in the
55 bonds, in such medium as may be determined by the
56 commission. The bonds and interest thereon shall be
57 exempt from taxation by the state of West Virginia, or
58 any county or municipality therein. The commission
59 may provide for the registration of such bonds in the
60 name of the owners as to principal alone, and as to both
61 principal and interest under such terms and conditions
62 as the commission may determine, and shall sell such
63 bonds in such manner as it may determine to be for the
64 best interest of the state, taking into consideration the
65 financial responsibility of the purchaser, and the terms
66 and conditions of the purchase, and especially the
67 availability of the proceeds of the bonds when required

68 for payment of the costs of the project, such sale to be
69 made at a price not lower than a price which, computed
70 upon standard tables of bond values, will show a net
71 return of not more than thirteen percent per annum to
72 the purchaser upon the amount paid therefor. The
73 proceeds of such bonds shall be used solely for the
74 payment of the cost of the project for which bonds were
75 issued, and shall be deposited and checked out as
76 provided by section five of this article, and under such
77 further restrictions, if any, as the commission may
78 provide. If the proceeds of bonds issued for a project
79 shall exceed the cost thereof, the surplus shall be paid
80 into the fund hereinafter provided for payment of the
81 principal and interest of such bonds. Such fund may be
82 used for the purchase of any of the outstanding bonds
83 payable from such fund at the market price, but at not
84 exceeding the price, if any, at which such bonds shall
85 in the same year be redeemable, and all bonds redeemed
86 or purchased shall forthwith be cancelled, and shall not
87 again be issued. Prior to the preparation of definitive
88 bonds, the commission may, under like restrictions,
89 issue temporary bonds with or without coupons, exchan-
90 geable for definitive bonds upon the issuance of the
91 latter. Notwithstanding the provisions of sections nine
92 and ten, article six, chapter twelve of this code, revenue
93 bonds issued under the authority herein granted shall
94 be eligible as investments for the workers' compensation
95 fund, teachers retirement fund, department of public
96 safety death, disability and retirement fund, West
97 Virginia public employees retirement system and as
98 security for the deposit of all public funds. Such revenue
99 bonds may be issued without any other proceedings or
100 the happening of any other conditions or things than
101 those proceedings, conditions and things which are
102 specified and required by this article, or by the
103 constitution of the state. The aggregate amount of all
104 issues of bonds outstanding at one time for all projects
105 authorized under the provisions of this article shall not
106 exceed sixty-two million five hundred thousand dollars
107 including the renegotiation, reissuance or refinancing of
108 any such bonds. No project, construction or acquisition,
109 in connection with which bonds are to be issued, shall

110 be initiated by the commission unless and until the
111 Legislature, through enactment of general law, ap-
112 proves the purpose, amount of bonds to be issued, and
113 the total cost for such project, construction or
114 acquisition.

CHAPTER 152

(S. B. 176—By Senator Tucker)

[Passed March 4, 1986; 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 and operation of steam boilers; providing criminal penalty for violation of permit requirements; fees for inspection.

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 carry-
2 ing more than fifteen pounds pressure per square inch
3 (except boilers on railroad locomotives subject to inspec-
4 tion under federal laws, portable boilers used for agricul-
5 tural purposes, boilers on automobiles, boilers of steam
6 fire engines brought into the state for temporary use in
7 times of emergency for the purpose of checking conflagra-
8 tions, boilers used in private residences which are used
9 solely for residential purposes, any sectional boilers, small
10 portable boilers commonly used in the oil and gas indus-
11 try about their wells and tool houses, and boilers under
12 the jurisdiction of the United States) in this state shall
13 first obtain a permit to operate a steam boiler from the
14 commissioner of labor, or from an inspector working
15 under his jurisdiction.

16 Applications for permits to operate a steam boiler must
17 be accompanied by a sworn statement made by the owner
18 or operator of such boiler, setting forth the condition of
19 the boiler and its appurtenances at which time, if the
20 facts disclosed by such statement meet the safety require-
21 ments established under this article, the commissioner of
22 labor shall issue a temporary permit, which shall be valid
23 until such boiler has been inspected by a boiler inspector
24 authorized by the state commissioner of labor; thereupon,
25 if the boiler meets the safety requirements established
26 under this article, the commissioner of labor shall issue
27 an annual permit to operate such steam boiler: *Provided,*
28 That boilers which are insured by an insurance company
29 operating in this state and which are inspected by such
30 insurance company's boiler inspector shall not be subject
31 to inspection by the state department of labor, during
32 any twelve months' period during which an inspection is
33 made by the insurance company's boiler inspector.

34 The commissioner of labor or state boiler inspector shall
35 have the authority to inspect steam boilers in this state.
36 To carry out the provisions of this section, the commis-
37 sioner of labor shall prescribe rules and regulations under
38 which boilers may be constructed and operated, accord-
39 ing to their class. The commissioner of labor shall be
40 authorized to revoke any permit to operate a steam boiler
41 if the rules prescribed by the commissioner of labor, or
42 his authorized representative, are violated or if a condi-
43 tion shall prevail which is hazardous to the life and health
44 of persons operating or employed at or around the boiler.
45 Any person or corporation who shall operate a steam boil-
46 er for which a permit is necessary under the provisions of
47 this section, without first obtaining such permit to operate
48 a steam boiler, shall be guilty of a misdemeanor, and,
49 upon conviction thereof, shall be fined not less than one
50 hundred dollars nor more than five hundred dollars.
51 Every day a steam boiler requiring a permit to operate is
52 operated without such permit shall be considered a sepa-
53 rate offense.

54 The commissioner may charge such fee as he determines
55 reasonable for the inspection of boilers by the department
56 of labor boiler inspector of the commissioner's authorized

57 boiler inspection agency, for the processing of inspection
58 reports from insurance companies, for issuing annual per-
59 mits to operate boilers and for commissioning insurance
60 company boiler inspectors. Such fees shall be established
61 by a rule promulgated in accordance with the provisions
62 of chapter twenty-nine-a of this code. No fee shall be
63 charged for the inspection of boilers used on mobile
64 equipment or vehicles used for occasional entertainment
65 or display purposes.

CHAPTER 153

(Com. Sub. for H. B. 1330—By Delegate Minard and Delegate McKinley)

[Passed February 25, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article eighteen, chapter five; to repeal section three, article thirteen, chapter seven; to repeal sections two and three, article one, chapter sixteen; to repeal sections twenty and twenty-one, article six, chapter seventeen-a; to repeal article nineteen, chapter thirty-one; to repeal article eleven, chapter fifty-six; to repeal section nine, article seven, chapter sixty; and to repeal sections one and two, article twelve, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the repeal of code provisions relating to agencies terminated following a performance and fiscal audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. WEST VIRGINIA BEAUTIFICATION COMMISSION.

ARTICLE 13. ECONOMIC OPPORTUNITY PROGRAMS.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

ARTICLE 19. WEST VIRGINIA COMMUNITY DEVELOPMENT AUTHORITY.

ARTICLE 11. JUDICIAL COUNCIL FOR STUDY OF PROCEDURE
AND PRACTICE.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§1. Repeal of sections relating to: The West Virginia beautification commission; economic opportunity advisory committee; health resources advisory council; motor vehicle license certificate appeal board; community development authority; judicial council; alcoholic beverage control licensing advisory board; and the commission on postmortem examinations.

1 Article eighteen, chapter five; section three, article
2 thirteen, chapter seven; sections two and three, article
3 one, chapter sixteen; sections twenty and twenty-one,
4 article six, chapter seventeen-a; article nineteen, chapter
5 thirty-one; article eleven, chapter fifty-six; section nine,
6 article seven, chapter sixty; and sections one and two,
7 article twelve, chapter sixty-one, all of the code of West
8 Virginia, one thousand nine hundred thirty-one, as
9 amended, are hereby repealed.

CHAPTER 154

(H. B. 2052—By Delegate Knight and Delegate Minard)

[Passed March 5, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-three, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scheduling the commission on mass transportation for termination pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twenty-three, 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 23. COMMISSION ON MASS TRANSPORTATION.**§5-23-12. Commission termination.**

1 This commission shall be terminated on the first day
2 of July, one thousand nine hundred eighty-eight, unless
3 review of its functions shall be undertaken pursuant to
4 the provisions of sections nine, ten and eleven, article
5 ten, chapter four of this code.

CHAPTER 155

(S. B. 552—By Senator R. Williams)

[Passed March 7, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of surplus state property; purchasers eligible to purchase such property; and domestic nonprofit corporations qualified as tax exempt under section 501 (c) (3) of the Internal Revenue Code exempt.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. STATE AGENCY FOR SURPLUS PROPERTY.**§5A-8-3a. Disposition by director of surplus state property; semiannual report by director; application of proceeds from sale.**

1 The director shall have the exclusive power and author-
2 ity to make disposition of commodities or expendable
3 commodities now owned or in the future acquired by the
4 state when, in the opinion of the director, any such
5 commodities are or become obsolete or unusable or are
6 not being used or should be replaced.

7 The director shall determine what commodities or ex-
8 pendable commodities should be disposed of and he shall

9 make such disposition in the manner which in his opinion
10 will be most advantageous to the state, either by trans-
11 ferring the particular commodities or expendable com-
12 modities between departments, by selling such commodi-
13 ties to county commissions, county boards of education,
14 municipalities, public service districts, county building
15 commissions, airport authorities, parks and recreation
16 commissions, nonprofit domestic corporations qualified as
17 tax exempt under section 501 (c) (3) of the Internal
18 Revenue Code of 1954, as amended, and volunteer fire
19 departments in this state, when such volunteer fire depart-
20 ments have been held exempt from taxation under section
21 501 (c) of the United States Internal Revenue Code, by
22 trading in such commodities as a part payment on the
23 purchase of new commodities, or by sale thereof to the
24 highest bidder by means of public auctions or sealed
25 bids, after having first advertised the time, terms and
26 place of such sale as a Class II legal advertisement in
27 compliance with the provisions of article three, chapter
28 fifty-nine of this code, and the publication area for such
29 publication shall be the county wherein the sale is to be
30 conducted. The sale may also be advertised in such other
31 advertising media as the director may deem advisable.
32 The director may sell to the highest bidder or to any one
33 or more of the highest bidders, if there is more than one,
34 or, if in his opinion the best interest of the state will be
35 served, reject all bids.

36 Upon the transfer of commodities or expendable com-
37 modities between departments, or upon the sale thereof
38 to an eligible organization described above, the director
39 shall set the price to be paid by the receiving eligible
40 organization, with due consideration given to current
41 market prices.

42 The director may sell expendable, obsolete or unused
43 motor vehicles owned by the state to an eligible organi-
44 zation, other than volunteer fire departments. In addition,
45 the director may sell expendable, obsolete or unused
46 motor vehicles owned by the state with a gross weight in
47 excess of four thousand pounds to an eligible volunteer
48 fire department. The director, with due consideration

49 given to current market prices, shall set the price to be
50 paid by the receiving eligible organization, for motor
51 vehicles sold pursuant to this provision: *Provided*, That
52 the sale price of any motor vehicle sold to an eligible
53 organization shall not be less than the "average loan"
54 value, as published in the most recent available eastern
55 edition of the National Automobile Dealer's Association
56 (N.A.D.A.) Official Used Car Guide, if such a value is
57 available, unless the fair market value of the vehicle is
58 less than the N.A.D.A. "average loan" value, in which
59 case the vehicle may be sold for less than the "average
60 loan" value. Such fair market value must be based on a
61 thorough inspection of the vehicle by the director or his
62 representative who shall consider the mileage of the ve-
63 hicle, and the condition of the body, engine and tires as
64 indicators of its fair market value. If no such value is
65 available, the director shall set the price to be paid by the
66 receiving eligible organization with due consideration
67 given to current market prices. The duly authorized rep-
68 resentative of such eligible organization, for whom such
69 motor vehicle or other similar surplus equipment is pur-
70 chased or otherwise obtained, shall cause ownership and
71 proper title thereto to be vested only in the official name
72 of the authorized governing body for whom the purchase
73 or transfer was made. Such ownership or title, or both,
74 shall remain in the possession of that governing body and
75 be nontransferable for a period of not less than one year
76 from the date of such purchase or transfer. Resale or
77 transfer of ownership of such motor vehicle or equipment
78 prior to an elapsed period of one year may be made only
79 by reason of certified unserviceability.

80 The director shall report to the legislative auditor,
81 semiannually, all sales of commodities or expendable
82 commodities made during the preceding six months to
83 eligible organizations. The report shall include a descrip-
84 tion of the commodities sold, the price paid by the eligible
85 organization, which received the commodities; and the
86 report shall show to whom each commodity was sold.

87 The proceeds of such sales or transfers shall be depos-
88 ited in the state treasury to the credit on a pro rata basis

89 of the fund or funds out of which the purchase of the
90 particular commodities or expendable commodities was
91 made: *Provided*, That the director may charge and assess
92 fees reasonably related to the costs of care and handling
93 with respect to the transfer, warehousing, sale and dis-
94 tribution of state property disposed of or sold pursuant
95 to the provisions of this section.

CHAPTER 156

(H. B. 1439—By Delegate Smith and Delegate Phillips)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i and thirteen-j, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen of said article, all relating generally to assessment of public service businesses for ad valorem property taxes; transferring and restoring to the board of public works the duty of making such assessments and holding hearings in connection therewith; providing for apportionment of values among counties, school districts and municipalities by the state auditor for current periods and thereafter, with prompt certification of valuations to be made by the state auditor to county commissions; specifying that state auditor, in providing for apportionment of values, use former, long-term consistent method of such apportionment; and terminating authority and activities of state tax commissioner in respect of making of final assessments, holdings of hearings in connection therewith and apportionment of values.

Be it enacted by the Legislature of West Virginia:

That sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-

e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i, and thirteen-j, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen of said article six be amended and reenacted, all to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

- §11-6-1. Returns of property to board of public works.
- §11-6-3. Same—Toll bridges.
- §11-6-4. Same—Car line companies.
- §11-6-5. Same—Pipeline companies.
- §11-6-7. Same—Telegraph and telephone companies.
- §11-6-8. Form and manner of making return; failure to make return; criminal penalty.
- §11-6-9. Compelling such return; procuring information and tentative assessments by tax commissioner.
- §11-6-10. Failure to give information required by board of public works; criminal penalty.
- §11-6-11. Valuation of property by board.
- §11-6-12. Appeal from valuation by board.
- §11-6-13. Apportionment of value among counties, districts and municipalities.
- §11-6-16. Entry of assessment by auditor of property of such public service businesses.

§11-6-1. Returns of property to board of public works.

- 1 (a) On or before the first day of May in each year a
- 2 return in writing shall be filed with the board of public
- 3 works: (1) By the owner or operator of every railroad,
- 4 wholly or in part within this state; (2) by the owner or
- 5 operator of every railroad bridge upon which a separate
- 6 toll or fare is charged; (3) by the owner or operator of
- 7 every car or line of cars used upon any railroad within
- 8 the state for transportation or accommodation of freight
- 9 or passengers, other than such owners or operators as
- 10 may own or operate a railroad within the state; (4) by
- 11 the owner or operator of every express company or
- 12 express line, wholly or in part within this state, used for
- 13 the transportation by steam or otherwise of freight and
- 14 other articles of commerce; (5) by the owner or operator
- 15 of every pipeline, wholly or in part within this state,
- 16 used for the transportation of oil or gas or water,
- 17 whether such oil or gas or water be owned by such

18 owner or operator or not, or for the transmission of
19 electrical or other power, or the transmission of steam
20 or heat and power or of articles by pneumatic or other
21 power; (6) by the owner or operator of every telegraph
22 or telephone line, wholly or in part within this state,
23 except private lines not operated for compensation; (7)
24 by the owner and operator of every gas company and
25 electric lighting company furnishing gas or electricity
26 for lighting, heating or power purposes; (8) by the owner
27 or operator of hydroelectric companies for the genera-
28 tion and transmission of light, heat or power; (9) by the
29 owner or operator of water companies furnishing or
30 distributing water; and (10) by the owner or operator
31 of all other public service corporations or persons
32 engaged in public service business whose property is
33 located wholly or in part within this state.

34 (b) The words "owner or operator," as applied herein
35 to railroad companies, shall include every railroad
36 company incorporated by or under the laws of this state
37 for the purpose of constructing and operating a railroad,
38 or of operating part of a railroad within this state,
39 whether such railroad or any part of it be in operation
40 or not; and shall also include every other railroad
41 company, or persons or associations of persons, owning
42 or operating a railroad or part of a railroad in this state
43 on which freight or passengers, or both, are carried for
44 compensation. The word "railroad," as used herein
45 includes every street, city, suburban or electric or other
46 railroad or railway.

47 (c) The words "owner or operator," as applied herein
48 to express companies, shall include every express
49 company incorporated by or under the laws of this state,
50 or doing business in this state, whether incorporated or
51 not, and any person or association of persons, owning or
52 operating any express company or express line upon any
53 railroad or otherwise, doing business partly or wholly
54 within this state.

55 (d) Such return shall be signed and sworn to by such
56 owner or operator if a natural person, or, if such owner
57 or operator shall be a corporation, shall be signed and
58 sworn to by its president, vice president, secretary or

59 principal accounting officer.

60 (e) The return required by this section of every such
61 owner or operator shall cover the year ending on the
62 thirty-first day of December, next preceding, and shall
63 be made on forms prescribed by the board of public
64 works, which board is hereby invested with full power
65 and authority and it is hereby made its duty to prescribe
66 such forms as will require from any owner or operator
67 herein mentioned such information as in the judgment
68 of the board may be of use to it in determining the true
69 and actual value of the properties of such owners or
70 operators.

§11-6-3. Same—Toll bridges.

1 In the case of any bridge upon which a separate toll
2 or fare is charged, such return shall show: (a) The
3 location of the same; (b) for what used; and, if used by
4 a railroad, what railroad uses it; (c) the length of such
5 bridge; and, if used by a railroad, the number of tracks
6 on it; (d) all other property owned by such owner or
7 operator and used in connection with such bridge; (e) the
8 capital actually invested; the amount of capital stock
9 authorized and issued, the par value and the market
10 value of the shares into which the capital stock is
11 divided, and the amount of dividends declared on the
12 capital stock within the twelve months preceding the
13 first day of the current assessment year; the total
14 amount of bonded indebtedness and of indebtedness not
15 bonded; gross earnings for the year from all sources; (f)
16 gross expenditures for the year, giving a detailed
17 statement thereof under each class or head of expendi-
18 tures; (g) any other information requested by the board
19 of public works which the board deems may be of use
20 to it in determining the actual value of such bridge or
21 bridges.

§11-6-4. Same—Car line companies.

1 In the case of car lines used for the transportation or
2 accommodation of passengers or freight by owners or
3 operators, other than railroad companies making their
4 return under this law, such return shall show for every
5 such owner or operator: (a) All cars and other rolling

6 stock, giving a detailed statement of the number of cars,
7 including passenger, mail, express, baggage, freight,
8 sleeping, dining, parlor, refrigerator, stock or other cars
9 of every description, and the true and actual value of
10 all such cars used wholly or in part in this state,
11 distinguishing between those used wholly in this state
12 and those used partly within and partly without the
13 state, and the true and actual value of those used wholly
14 within the state and those used partly within and partly
15 without the state, and the proportional value of such
16 cars used partly within and partly without the state,
17 according to the time used and the number of miles run
18 by such cars in and out of the state, the railroad over
19 which they were run, and the proportional value in each
20 county within this state within which such cars were
21 run; but in any case where it may appear to the board
22 of public works that from the nature of the employment
23 of such cars, or otherwise, it is not practicable to show
24 the matters hereinbefore required in this section as to
25 the cars used in this state, and the proportional value
26 of the cars used partly within and partly without this
27 state and each county thereof, the board may, as to such
28 matters, accept such other information as it may be
29 practicable to obtain, or in its discretion the board may
30 dispense with such showing as to any such matter; (b)
31 real and personal property of every kind, whatever,
32 including money, credits and investments and the
33 amount thereof, wholly held or used in this state,
34 showing the amount and the true and actual value in
35 each county; and (c) the actual capital employed in the
36 business of such owner or operator, the total amount of
37 bonded indebtedness with respect to such line, and of
38 indebtedness not bonded; the whole length of the several
39 lines of railroad over which such cars run, including
40 branches and connecting lines in and out of the state;
41 and, if such owner or operator be a corporation, its
42 actual capital stock and the number, character, amount
43 and market value of the shares thereof, and the amount
44 of capital stock actually paid in; its bonded indebtedness
45 and its indebtedness not bonded. The board of public
46 works shall have the right to require any such owner
47 or operator to furnish such other and further informa-

48 tion as, in the judgment of the board, may be of use to
49 it in determining the true and actual value of the
50 property to be assessed to such owner or operator.

§11-6-5. Same—Pipeline companies.

1 In the case of a pipeline, such return shall show for
2 each owner or operator: (a) The number of miles of
3 pipeline owned, leased or operated within this state, the
4 size or sizes of the pipe composing such line, and the
5 material of which such pipe is made; (b) if such pipeline
6 be partly within and partly without this state, the whole
7 number of miles thereof within this state and the whole
8 number of miles without this state, including all
9 branches and connecting lines in and out of the state;
10 (c) the length, size and true and actual value of such
11 pipelines in each county of this state, including in such
12 valuation the main line, branches and connecting lines,
13 and stating the different values of the pipe separately;
14 (d) its pumping stations, machine and repair shops and
15 machinery therein, tanks, storage tanks and all other
16 buildings, structures and appendages connected or used
17 therewith, together with all real estate, other than its
18 pipeline, owned or used by it in connection with its
19 pipeline, including telegraph and telephone lines, and
20 the true and actual value of all such buildings, struc-
21 tures, machinery and appendages and of each parcel of
22 such real estate, including such telegraph and telephone
23 lines, and the true and actual value thereof in each
24 county in this state in which it is located; and the
25 number and value of all tank cars, tanks, barges, boats
26 and barrels; (e) its personal property of every kind
27 whatsoever, including money, credits and investments,
28 and the amount thereof wholly held or used in this state,
29 showing the amount and value thereof in each county;
30 (f) an itemized list of all other real property within this
31 state, with the location thereof; and (g) the actual capital
32 employed in the business of such owner or operator, the
33 total amount of the bonded indebtedness of such owner
34 or operator with respect to such line, and of indebted-
35 ness not bonded; and, if such owner or operator be a
36 corporation, its capital stock, the character, number and
37 amount and the market value of the shares thereof, and

38 the amount of capital stock actually paid in; its bonded
39 indebtedness and its indebtedness not bonded. The
40 board of public works shall have the right to require
41 such owner or operator to furnish such other and further
42 information as, in the judgment of the board may be of
43 use in determining the true and actual value of the
44 property to be assessed to such owner or operator.

§11-6-7. Same—Telegraph and telephone companies.

1 In the case of a telegraph or telephone line, such
2 report shall show for every such owner or operator: (a)
3 The number of miles of lines owned, leased or operated
4 within this state, the gauge of the wire, the number of
5 strands of wire, the material of which it is made, and,
6 as accurately as may be, the time when the line or any
7 material part thereof was constructed or last replaced;
8 (b) if such lines be partly within and partly without the
9 state, the whole number of miles thereof within this
10 state and the whole number of miles without this state,
11 including all branches and connecting lines in and out
12 of the state; (c) the true and actual value per mile of such
13 line in each county of this state; (d) its stations, shops
14 and machinery therein, and all buildings, structures and
15 appendages connected or used therewith, together with
16 all real estate, other than its telegraph or telephone line,
17 owned or used by it in connection with its line, and of
18 each parcel of such real estate and the true and actual
19 value thereof in each county in this state in which it is
20 located; (e) its personal property of every kind what-
21 soever, including money, credits and investments, and
22 the amounts thereof wholly held or used in this state,
23 showing the amount and value thereof in each county;
24 (f) an itemized list of all other real property within this
25 state, with the location thereof; and (g) the actual capital
26 employed in the business of such owner or operator, the
27 total amount of the bonded indebtedness of such owner
28 or operator, with respect to such line, and of all
29 indebtedness not bonded; and, if such owner or operator
30 be a corporation, its capital stock, the character,
31 number, amount and the market value of the shares
32 thereof, and the amount of capital stock actually paid
33 in; its bonded indebtedness and its indebtedness not

34 bonded. The board of public works shall have the right
35 to require any such owner or operator to furnish such
36 other and further information as, in the judgment of the
37 board, may be of use to it in determining the true and
38 actual value of the property to be assessed to such owner
39 or operator.

§11-6-8. Form and manner of making return; failure to make return; criminal penalty.

1 All returns to be made to the board of public works,
2 under this chapter, shall be made in conformity with
3 any reasonable requirement of the board of which the
4 person making the return shall have had notice, and
5 shall be made upon forms which may be furnished by
6 the board, and according to instructions which the board
7 may give relating thereto, and to the description and
8 itemizing of the property. Such owner or operator,
9 whether a natural person, or a corporation or company,
10 failing to make such return as herein required shall be
11 guilty of a misdemeanor, and fined one thousand dollars
12 for each month such failure continues.

§11-6-9. Compelling such return; procuring information and tentative assessments by tax commissioner.

1 (a) If any owner or operator fails to make such return
2 within the time required by section one of this article,
3 it shall be the duty of the tax commissioner to take such
4 steps as may be necessary to compel such compliance,
5 and to enforce any and all penalties imposed by law for
6 such failure.

7 (b) The return delivered to the tax commissioner shall
8 be examined by him, and if it be found insufficient in
9 form or in any respect defective, imperfect or not in
10 compliance with law, he shall compel the person
11 required to make it to do so in proper and sufficient
12 form, and in all respects as required by law.

13 (c) If any such owner or operator fails to make such
14 return, the tax commissioner shall proceed, in such
15 manner as to him may seem best, to obtain the facts and
16 information required to be furnished by such returns.

17 (d) The tax commissioner may send for persons and
18 papers, and may compel the attendance of any person
19 and the production of any paper necessary, in the
20 opinion of said tax commissioner, to enable him to obtain
21 the information required for the proper discharge of his
22 duties under this section.

23 (e) The tax commissioner shall arrange, collate and
24 tabulate such returns and all pertinent information and
25 data contained therein, such further evidence or
26 information as may be required by the tax commissioner
27 of such owner or operator, and all other pertinent
28 evidence, information and data he has been able to
29 procure, upon suitable work sheets, so that they may be
30 conveniently considered, and shall on or before the
31 fifteenth day of September, lay such returns and work
32 sheets, together with his recommendations in the form
33 of a tentative assessment of the property of each such
34 owner or operator, before the board of public works.
35 And as soon as the tax commissioner has completed the
36 preparation of such work sheets and tentative assess-
37 ments, he shall notify the owner or operator affected
38 thereby of the amount of such tentative assessment by
39 written notice deposited in the United States post office,
40 addressed to such owner or operator at the principal
41 office or place of business of such owner or operator, and
42 the tax commissioner shall retain in his office true
43 copies of such work sheets which shall be available for
44 inspection by any such owner or operator or his duly
45 authorized representative.

**§11-6-10. Failure to give information required by board
of public works; criminal penalty.**

1 If any person shall refuse to appear before the board
2 when required to do so, as aforesaid, or shall refuse to
3 testify before the board in regard to any matter as to
4 which the board may require him to testify, or if any
5 person shall refuse to produce any paper in his posses-
6 sion or under his control, which the board may require
7 him to produce, every such person shall be guilty of a
8 misdemeanor, and fined five hundred dollars, and may
9 be imprisoned not less than one nor more than six
10 months, at the discretion of the court.

§11-6-11. Valuation of property by board.

1 Upon the fifteenth day after giving the notices
2 required by section nine of this article, or as soon
3 thereafter as reasonably convenient but not later than
4 the first day of October, the board of public works shall
5 proceed to assess and fix the true and actual value of
6 all property of such owner or operator hereinbefore
7 required to be returned, in each county through which
8 the railroad, car line, cars, express, telegraph, tele-
9 phone, or pipeline of such owner or operator runs, and
10 in which any property to be assessed is located. In
11 ascertaining such value the board shall consider the
12 return, if any, made by the owner or operator, and any
13 return which may have been previously made by such
14 owner or operator, the work sheets and tentative
15 assessment recommended by the tax commissioner, such
16 evidence or information as may be offered by such
17 owner or operator, such further evidence or information
18 as may be required by the board of such owner or
19 operator, and any other pertinent evidence, information
20 and data. Any and all evidence, information and data,
21 at a regular meeting of the board held for such purpose
22 at least fifteen days after giving the notice required by
23 section nine of this article. Before any assessment shall
24 be made by the board, any and all evidence, information
25 and data considered by the board shall be available for
26 inspection by any such owner or operator or his duly
27 authorized representative, and an opportunity given to
28 be heard thereon when the board of public works has
29 assessed any property hereby required to be returned,
30 and has determined the valuation thereof, such assess-
31 ment and valuation shall be entered of record in the
32 book of minutes of its proceedings, and shall be certified
33 by the secretary of the board to the auditor.

34 Nothing in this chapter contained shall be construed
35 to require the assessment by the board of public works
36 of any part of a railroad, telegraph, telephone or
37 pipeline until such part is so far completed as to be fit
38 for use. But material held by any railroad, telegraph,
39 telephone or pipeline company shall be returned to the
40 board of public works for assessment as personal

41 property. As soon as such assessment is made, the
42 secretary of the board shall notify the owner or operator
43 affected thereby of the amount thereof by written notice
44 deposited in the United States post office, addressed to
45 such owner or operator at the principal office or place
46 of business of such owner or operator. Such assessment
47 and valuation shall be final and conclusive, unless the
48 same be appealed from in the manner following, within
49 fifteen days after such notice is so deposited.

§11-6-12. Appeal from valuation by board.

1 Any owner or operator claiming to be aggrieved by
2 any such decision may, within the time aforesaid, apply
3 by petition in writing, duly verified, to the circuit court
4 of the county in which the property so assessed is
5 situated, or if such property be situated in more than
6 one county then in the county in which the largest
7 assessment of such owner or operator was made in the
8 next preceding year, for an appeal from the assessment
9 and valuation so made of all such property, and
10 jurisdiction is hereby conferred upon and declared to
11 exist in the court, in which such application is filed, to
12 grant, docket and hear such appeal; and such appeal, as
13 to all of the property so assessed, as well as that situated
14 in the county of the court so applied to, as that situated
15 in the several other counties, shall forthwith be allowed
16 by such court so applied to, and be heard by such court
17 as to all of such property as soon as possible after the
18 appeal is docketed, but notice in writing of such petition
19 shall be given to the secretary of state, as secretary of
20 the board of public works, by mailing a copy of the
21 petition for an appeal filed as aforesaid, which said
22 petition shall recite the fact that copies of such petition
23 have been sent by registered mail. Notice in writing of
24 the hearing upon such petition shall be given to the state
25 tax commissioner at least fifteen days beforehand.
26 Likewise, the state tax commissioner may, by giving
27 notice in writing at least fifteen days beforehand to the
28 petitioner, bring on such appeal for hearing. Upon such
29 hearing the court shall hear all such legal evidence as
30 shall be offered on behalf of the state or any other
31 county, district or municipal corporation interested, or

32 on behalf of the appealing owner or operator. If the
33 court be satisfied that the value so fixed by the board
34 of public works is correct, it shall confirm the same, but
35 if it be satisfied that the value so fixed by the board is
36 either too high or too low, the court shall correct the
37 valuation so made and shall ascertain and fix the true
38 and actual value of such property according to the facts
39 proved, and shall certify such value to the auditor and
40 to the secretary of the board of public works. The state
41 or the owner or operator may appeal to the supreme
42 court of appeals if the assessed value of the property be
43 fifty thousand dollars or more.

44 If the court to which an application for appeal would
45 properly be made as aforesaid shall not be in session,
46 the judge thereof in vacation shall forthwith allow the
47 appeal, and if the judge thereof be disqualified or for
48 any reason not be available, the filing of the aforesaid
49 petition in the office of the clerk of the circuit court of
50 the county in which the largest assessment of such
51 owner or operator was made in the preceding year,
52 within the time of aforesaid, shall constitute sufficient
53 compliance with this section, and the appeal shall
54 thereafter be proceeded with as otherwise provided in
55 this section.

§11-6-13. Apportionment of value among counties, districts and municipalities.

1 In case the list and valuation of the property filed with
2 the tax commissioner be satisfactory to the board of
3 public works, or upon assessment of the property of such
4 owner or operator being made by the board of public
5 works, the auditor shall immediately apportion to each
6 county, in which any part of such property is situated,
7 the value of the property therein of every such owner
8 or operator as valued or assessed hereunder and the
9 relative value of such operating property within each
10 county compared to the value of the total operating
11 property within the state, to be determined upon such
12 factors as the auditor shall deem proper; and further
13 shall apportion such values among the several districts,
14 being school districts, and a proportional valuation to
15 each municipality therein, in which any part of such

16 property is situated, according to the value thereof, as
17 near as may be, and forthwith shall certify to the county
18 commission of such county the values so apportioned.
19 The clerk of the county commission shall forthwith
20 certify such values to the school district and to the
21 several municipalities, respectively, in such county.

22 Inasmuch as there was litigation challenging the long
23 term apportionment method consistently used by the
24 state auditor under the provisions of this section by
25 which distribution was made of the ad valorem tax
26 values of the operable properties and assets of public
27 service businesses attributable to more than one county,
28 and with the Legislature subsequently approving,
29 codifying and ordering the continuance of such method
30 of apportionment; and inasmuch as the Legislature
31 having changed such apportionment method and having
32 vested the authority to accomplish such and to issue
33 assessments under this article through actions of the
34 state tax commissioner rather than assessment by the
35 board of public works and apportionment by the state
36 auditor, pursuant to chapter one hundred fifty-nine, acts
37 of the Legislature, regular session, one thousand nine
38 hundred eighty-five; and in light of the Legislature
39 being unaware of the dramatic shifting of valuations
40 among counties as a result of application or use of such
41 new apportionment method and thus desiring to return
42 to the former method of apportionment and that the
43 same be performed by the state auditor, as formerly and
44 that final assessment activity, as such, and hearings in
45 respect thereof be performed by the board of public
46 works, as formerly; therefore, the Legislature finds and
47 determines that apportionment and distribution of ad
48 valorem tax valuations hereunder should and are to be
49 performed by the state auditor promptly and for current
50 periods and on the basis of the above-mentioned long-
51 term apportionment method used consistently by the
52 state auditor and with the valuations as determined by
53 the application of such apportionment method to be
54 certified forthwith to the county commissions. Specifi-
55 cally, as to the true and actual values of the property
56 of public service businesses reported on their tax
57 returns required to be filed by the first day of May, one

58 thousand nine hundred eighty-five and as thereafter
59 determined by tentative assessment and final assess-
60 ment by the tax commissioner or by court decision for
61 tax fiscal year one thousand nine hundred eighty-six, the
62 state auditor shall, by the first day of March, one
63 thousand nine hundred eighty-six, or as soon as may be
64 practicable, apportion and distribute such values, as
65 required, to the respective levying bodies and on the
66 basis of his using the long-term, consistent apportion-
67 ment method of his office as long engaged in and applied
68 under the provisions of this section and article.

**§11-6-16. Entry of assessment by auditor of property of
such public service businesses.**

1 As soon as possible after the valuation of the property
2 of such owner or operator is fixed by the board of public
3 works or by the circuit court on appeal as aforesaid, and
4 after he shall have obtained the information herein
5 provided for to enable him to do so, the auditor shall
6 assess and charge each class of property of every such
7 owner or operator with the taxes properly chargeable
8 thereon, in a book to be kept by him for that purpose,
9 as follows: (a) With the whole amount of taxes upon such
10 property for state and state school purposes, if any such
11 taxes are levied; (b) with the whole amount of taxes on
12 such property in each county for county purposes; (c)
13 with the whole amount of taxes on such property in each
14 school district for free school and building purposes; and
15 (d) with the whole amount of taxes on such property in
16 each municipal corporation for each and all of the
17 purposes for which a levy therein was made by the
18 municipal authorities of such corporation.

CHAPTER 157

(H. B. 2002—By Mr. Speaker, Mr. Albright, and Delegate Swann,
by request of the Executive)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section two-d, article thirteen,
chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to

amend said article by adding thereto a new section, designated section three-g; and to further amend chapter eleven of said code by adding thereto a new article, designated article thirteen-h, all relating to sales of electricity from an electric light and power company seller to a manufacturing company purchaser utilizing such electricity in an electrolytic process for the manufacture of chlorine in this state being exempt from business and occupation tax to such seller and with the full amount of such tax exemption being passed on in the purchase price to such manufacturer purchaser; providing a credit against business and occupation taxes for electric power companies that generate electricity in this state from coal, which electricity is not sold by them to utility customers in this state, making allowance of credit dependent on an increase in the number of kilowatts of electricity generated from coal in this state over and above the number of kilowatts so generated by the taxpayer during the base year; limiting the credit to kilowatts of electricity generated from coal produced from mines employing West Virginia miners; making legislative findings; defining terms; providing formula for computation of credit; requiring certification that coal was produced from an eligible mine; and providing effective date.

Be it enacted by the Legislature of West Virginia:

That section two-d, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section three-g; and that chapter eleven of said code be amended by adding thereto a new article, designated article thirteen-h, all to read as follows:

Article

13. Business and Occupation Tax.

13H. Business and Occupation Tax Credit for Increased Generation of Electricity.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2d. Public service or utility business.

§11-13-3g. Tax credit for increased generation of electricity from coal.

§11-13-2d. Public service or utility business.

1 (a) Upon any person engaging or continuing within
2 this state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, there is likewise hereby
6 levied and shall be collected taxes on account of the
7 business engaged in equal to gross income of the
8 business multiplied by the respective rates as follows:

9 (1) Street and interurban and electric railways, one
10 and four-tenths percent;

11 (2) Water companies, four and four-tenths percent,
12 except as to income received by municipally owned
13 water plants;

14 (3) Electric light and power companies, four percent
15 on sales and demand charges for domestic purposes and
16 commercial lighting and four percent on sales and
17 demand charges for all other purposes, except as to
18 income received by municipally owned plants producing
19 or purchasing electricity and distributing same: *Pro-*
20 *vided*, That electric light and power companies which
21 engage in the supplying of public service but which do
22 not generate or produce electric power shall be taxed
23 on the gross income derived therefrom at the rate of
24 three percent on sales and demand charges for domestic
25 purposes and commercial lighting and three percent on
26 sales and demand charges for all other purposes, except
27 as to income received by municipally owned plants:
28 *Provided, however*, That the sale of electric power under
29 this section shall be taxed at the rate of two and forty-
30 six hundredths percent on that portion of the gross
31 proceeds derived from the sale of electric power to a
32 plant location of a customer engaged in a manufacturing
33 activity, if the contract demand at such plant location
34 exceeds two hundred thousand kilowatts per hour per
35 year, or if the usage of such plant location exceeds two
36 hundred thousand kilowatts per hour in a year: *Provided*
37 *further*, That such two and forty-six hundredths percent
38 rate will be reduced to a rate of two and three hundred
39 thirty-seven thousandths percent through occurrence of

40 the contemplated five percent reduction of rates on the
41 first day of July, one thousand nine hundred eighty-five,
42 and with such rate to thereafter, on the first day of July,
43 one thousand nine hundred eighty-seven, become two
44 percent: *Provided further*, That the sale of electric power
45 under this section shall be exempt from the tax imposed
46 by section two if it is separately metered and consumed
47 in an electrolytic process for the manufacture of chlorine
48 in this state, and the rate reduction herein provided to
49 the taxpayer shall be passed on to the manufacturer of
50 the chlorine;

51 (4) Natural gas companies, four and twenty-nine
52 hundredths percent on the gross income;

53 (5) Toll bridge companies, four and twenty-nine
54 hundredths percent; and

55 (6) Upon all other public service or utility business,
56 two and eighty-six hundredths percent.

57 (b) The measure of this tax shall not include gross
58 income derived from commerce between this state and
59 other states of the United States or between this state
60 and foreign countries. The measure of the tax under this
61 section shall include only gross income received from the
62 supplying of public service. The gross income of the
63 taxpayer from any other activity shall be included in the
64 measure of the tax imposed upon such other activity by
65 the appropriate section or sections of this article.

**§11-13-3g. Tax credit for increased generation of elec-
tricity from coal.**

1 (a) There shall be allowed as a credit against the tax
2 imposed by section two of this article, on the privilege
3 taxable under section two-m of this article, the amount
4 determined under article thirteen-h of this chapter,
5 providing a credit for increased generation of electricity
6 at electric power plants in this state which burn coal
7 produced by miners who are residents of this state.

8 (b) The tax commissioner may prescribe such regula-
9 tions as he deems necessary to carry out the purposes
10 of this section and article thirteen-h of this chapter.

ARTICLE 13H. BUSINESS AND OCCUPATION TAX CREDIT FOR INCREASED GENERATION OF ELECTRICITY.

§11-13H-1. Legislative finding.

§11-13H-2. Definitions.

§11-13H-3. Credit allowed; amount of credit; effective date.

§11-13H-4. Certification by producers and sellers of coal.

§11-13H-1. Legislative finding.

1 The Legislature finds that electricity generated in this
2 state is by and large generated from coal; that this state
3 and this region are blessed with large quantities of
4 mineable coal that is suitable for use as fuel to generate
5 electricity; that there are sound economic purposes to
6 locating electric power generating facilities in the coal
7 fields and to encouraging power companies to operate
8 such plants at their most cost-effective level; and that
9 many West Virginia miners work in mines located in
10 other states and live or reside in this state. Therefore,
11 encouraging greater utilization of existing power plants
12 and their use of coal produced by West Virginia miners
13 at mines located in this or other states, is in the public
14 interest and promotes the general welfare of the people
15 of this state, in that it will increase employment
16 opportunities for West Virginia residents.

§11-13H-2. Definitions.

1 (1) *Base year*.—The term “base year” means the
2 average number of kilowatts of electric power generated
3 in this state from coal by the taxpayer during either (a)
4 the three years immediately preceding the current tax
5 year; or (b) the three tax years immediately preceding
6 the tax year one thousand nine hundred eighty-six,
7 whichever three-year period the taxpayer shall by the
8 first day of July, one thousand nine hundred eighty-six,
9 permanently elect to use as the base year.

10 (2) *Eligible coal*.—The term “eligible coal” means coal
11 produced from an eligible mine, as defined in subsection
12 (3).

13 (3) *Eligible mine*.—The term “eligible mine” means
14 any mine located in this state and any mine which
15 employs at least one hundred West Virginia residents
16 (as defined for personal income taxes in section seven.

17 article twenty-one of this chapter) located in another
18 state.

19 (4) Other terms used in this article shall have the
20 meanings ascribed to them in section four, article ten
21 of this chapter or section one, article thirteen of this
22 chapter, unless the context in which it is used in this
23 article clearly requires another meaning.

§11-13H-3. Credit allowed; amount of credit; effective date.

1 (a) An electric power company that generates
2 electricity at a power plant located in this state,
3 that uses coal as its primary source of fuel to
4 generate such electricity, shall be allowed a credit,
5 as determined under subsection (b) of this section,
6 against its liability for tax under section two-m,
7 article thirteen of this chapter, if the taxpayer
8 increases the amount of electricity it generates in
9 this state, consuming coal produced from an
10 eligible mine that employs miners who are resi-
11 dents of this state.

12 (b) *Amount of credit.* The credit allowed by this
13 section is an amount equal to the amount deter-
14 mined by:

15 (1) First multiplying the taxpayer's liability for tax
16 under section two-m, article thirteen of this chapter, for
17 the tax year, by a fraction equal to one minus a fraction
18 in which:

19 (A) The numerator is the kilowatts of electric power
20 generated from coal in this state by the taxpayer during
21 the base year; and

22 (B) The denominator is the kilowatts of electric power
23 generated from coal in this state by the taxpayer during
24 the tax year.

25 (2) Second multiplying the product determined under
26 paragraph (1) by a fraction in which:

27 (A) The numerator is tons of eligible coal purchased
28 by the taxpayer during the tax year to generate
29 electricity in this state; and

30 (B) The denominator is the total tons of coal pur-
31 chased by the taxpayer during the tax year to generate
32 electricity in this state.

33 (c) *Effective date.* The credit allowed by this section
34 shall apply to business and occupation tax liabilities for
35 calendar months beginning after the thirtieth day of
36 June, one thousand nine hundred eighty-six. It shall not
37 apply to liabilities for calendar months or quarters
38 ending before such thirtieth day of June.

§11-13H-4. Certification by producers and sellers of coal.

1 (a) The person selling coal produced from an eligible
2 mine shall certify to the electric power company
3 purchasing the coal the amount thereof that was
4 produced from an eligible mine.

5 (b) If a producer of eligible coal sells that coal to
6 purchaser for resale to an electric power company for
7 consumption in this state, he shall certify to his
8 purchaser the amount thereof that was produced from
9 an eligible mine.

10 (c) All certifications shall be in the form prescribed
11 by the tax commissioner and provide such information
12 as he deems necessary for determining compliance with
13 this article. An employee who signs the certification on
14 behalf of a proprietorship, corporation, partnership or
15 a group or combination acting as a unit shall be
16 presumed to have authority to make and sign the
17 certification on behalf of his or her employer.

CHAPTER 158

(Com. Sub. for S. B. 165—By Senator Spears, Mr. Tonkovich, Mr. President, Senators
Tomblin, Lucht, Harman, Cook, Jarrell, Whitacre, Sharpe, Jones, Holmes, Fanning,
Yanero and Karras)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article thirteen-b,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; to further amend said

chapter by adding thereto a new article, designated article thirteen-g; to amend article twenty-four of said chapter by adding thereto a new section, designated section eleven-a; and to amend chapter twenty-four of said code by adding thereto a new article, designated article two-c, all relating generally to providing low-cost telephone service to qualified low-income residential customers; allowing certain tax credits to reimburse telephone utilities for revenue deficiencies incurred in providing such low-cost telephone service; legislative findings and purpose; telephone utilities subject to public service commission to file new tariffs; low-cost service to be known as tel-assistance service; definitions; monthly rate for such service; certain charges and service prohibited; eligibility for such service; rules and regulations to be promulgated by the public service commission and department of human services; and recovery of revenue deficiencies.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

24. Public Service Commission.

CHAPTER 11. TAXATION.

Article.

13B. Telecommunications Tax.

13G. Tax Credit for Reducing Telephone Utility Rates for Certain Low-Income Residential Customers.

24. Corporation Net Income Tax.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-10a. Tax credit for business investment and jobs expansion; credit for eligible research and

development projects; credit for coal-loading facilities; credit for reducing telephone rates for certain low-income residential customers; rules.

- 1 (a) There shall be allowed as a credit against the tax
2 imposed by this article for the taxable year, the amount
3 determined under articles thirteen-c, thirteen-d and
4 thirteen-g of this chapter, relating respectively to:
5 (1) Tax credit for business investment and jobs
6 expansion;
7 (2) Tax credit for eligible research and development
8 projects;
9 (3) Tax credit for coal-loading facilities; and
10 (4) Tax credit for reducing telephone utility rates for
11 certain low-income residential customers.
12 (b) The tax commissioner shall prescribe such rules as
13 he considers necessary to carry out the purposes of this
14 section and articles thirteen-c, thirteen-d and thirteen-g of
15 this chapter.

**ARTICLE 13G. TAX CREDIT FOR REDUCING TELEPHONE UTILITY
RATES FOR CERTAIN LOW-INCOME RESIDENTIAL
CUSTOMERS.**

- §11-13G-1. Legislative purpose.
§11-13G-2. Definitions.
§11-13G-3. Amount of credit.
§11-13G-4. When credit may be taken.
§11-13G-5. Application of credit.

§11-13G-1. Legislative purpose.

1 In order to reimburse telephone utilities for the revenue
2 deficiencies which they incur in providing telephone
3 service at special reduced rates to certain low-income
4 residential customers in accordance with the provisions of
5 article two-c, chapter twenty-four of this code, there is
6 hereby provided a tax credit for providing telephone service
7 at special rates to qualified low-income residential
8 customers.

§11-13G-2. Definitions.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in articles

3 twelve-a and thirteen-b of this chapter, unless a different
4 meaning is clearly required by the context in which it is
5 used or by definition in this article.

6 (b) As used in this article, the term:

7 (1) "Eligible taxpayer" means a utility which has
8 provided telephone service to qualified low-income
9 residential customers at special reduced rates.

10 (2) "Cost of providing telephone service at special
11 reduced rates" means the amount certified by the public
12 service commission under the provisions of section two,
13 article two-c, chapter twenty-four of this code as the
14 revenue deficiency incurred by a telephone utility in
15 providing telephone service at special reduced rates as
16 required by section one, article two-c, chapter twenty-four
17 of this code.

18 (3) "Special reduced rates" means the rates ordered by
19 the public service commission under the authority of
20 section one, article two-c, chapter twenty-four of this code.

21 (4) "Qualified low-income residential customers"
22 means customers eligible to receive telephone service at
23 special reduced rates.

§11-13G-3. Amount of credit.

1 There shall be allowed to any eligible taxpayer a credit
2 against the carrier income tax imposed by article twelve-a
3 of this chapter or telecommunications tax imposed by
4 article thirteen-b of this chapter, whichever such tax may
5 be imposed upon the eligible taxpayer, for providing
6 telephone service at special reduced rates to qualified low-
7 income residential customers. The amount of the credit
8 available to any eligible taxpayer shall be equal to its cost of
9 providing telephone service at special reduced rates to
10 qualified low-income residential customers less any
11 reimbursement of such cost which the taxpayer has
12 received through other means.

§11-13G-4. When credit may be taken.

1 An eligible taxpayer may claim a credit allowed under
2 section three of this article against its tax liability for the
3 taxable year for which it receives certification of the
4 amount of its revenue deficiency from the public service
5 commission.

§11-13G-5. Application of credit.

1 (a) Any unused portion of a credit allowed under this
2 article may be taken as a credit against corporation net
3 income taxes due for the taxable year as provided in section
4 eleven-a, article twenty-four of this chapter.

5 (b) If any portion of the amount certified as the eligible
6 taxpayer's revenue deficiency by the public service
7 commission is not recovered under subsection (a) hereof,
8 the unrecovered amount may be carried over to the
9 subsequent year as a tax credit as allowed by section three
10 of this article and shall be applied as a credit before any
11 other credits for that year are applied.

12 (c) In no event shall an eligible taxpayer be allowed to
13 recover more than one hundred percent of its certified
14 revenue deficiency.

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-11a. Credit for reducing telephone utility rates for low-income residential customers.**

1 (a) *General.* — A credit shall be allowed against the
2 primary tax liability of an eligible taxpayer under this
3 article for the cost of providing telephone service at special
4 reduced rates to qualified low-income residential
5 customers which has not been reimbursed by any other
6 means.

7 (b) *Definitions.* — For purposes of this section, the term:

8 (1) "Eligible taxpayer" means a utility which has
9 provided telephone service to qualified low-income
10 residential customers at special reduced rates.

11 (2) "Cost of providing telephone service at special
12 reduced rates" means the amount certified by the public
13 service commission under the provisions of section two,
14 article two-c, chapter twenty-four of this code, as the
15 revenue deficiency incurred by a telephone utility in
16 providing telephone service at special reduced rates, as
17 required by section one, article two-c, chapter twenty-four
18 of this code.

19 (3) "Special reduced rates" means the rates ordered by
20 the public service commission under the authority of
21 section one, article two-c, chapter twenty-four of this code.

22 (4) "Qualified low-income residential customers"

23 means customers eligible to receive telephone service at
24 special reduced rates.

25 (c) *Amount of credit.* — The amount of the credit
26 available to any eligible taxpayer shall be equal to its cost of
27 providing telephone service at special reduced rates to
28 qualified low-income residential customers less any
29 reimbursement of such cost which the taxpayer has
30 received through any other means.

31 (d) *When credit may be taken.* — An eligible taxpayer
32 may claim a credit allowed under this section on its annual
33 return for the taxable year for which it receives
34 certification of the amount of its revenue deficiency from
35 the public service commission.

36 Notwithstanding the provisions of section sixteen of this
37 article to the contrary, no credit may be claimed on any
38 declaration of estimated tax filed for such taxable year
39 prior to the first day of July of such taxable year. Such
40 credit may be claimed on a declaration or amended
41 declaration filed on or after such date, but only if the
42 amount certified will not be recovered by application of the
43 tax credit allowed by article thirteen-g of this chapter. In
44 such event, only that amount not recovered by the tax credit
45 allowed by article thirteen-g of this chapter may be
46 considered or taken as a credit when estimating the tax due
47 under this article. In no event may the eligible taxpayer
48 recover more than one hundred percent of its revenue
49 deficiency as certified by the public service commission.

50 (e) *Application of credit.* — The credit allowable by this
51 section for a taxable year is not subject to the fifty percent
52 limitation specified in section nine of this article.
53 Notwithstanding the provisions of section four, article
54 thirteen-g of this chapter, any unused credit may be carried
55 over and applied against the eligible taxpayer's tax liability
56 in the manner specified in section five, article thirteen-g of
57 this chapter.

58 (f) *Copy of certification order.* — A copy of the
59 certification order from the public service commission shall
60 be attached to any annual return on which a credit allowed
61 by this section is taken.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

**ARTICLE 2C. REDUCED RATES FOR CERTAIN LOW-INCOME
RESIDENTIAL CUSTOMERS OF TELEPHONE SER-
VICE.**

- §24-2C-1. Legislative findings; utilities subject to public service commission to file new rates.
- §24-2C-2. Tel-assistance; definitions.
- §24-2C-3. Monthly rate set by public service commission; prohibited and permissible charges.
- §24-2C-4. Availability of tel-assistance service; determination of eligibility; promulgation of rules.
- §24-2C-5. Recovery of revenue deficiencies.

**§24-2C-1. Legislative findings; utilities subject to public
service commission to file new rates.**

1 The Legislature finds that universal telephone service
2 contributes to the state's economic, social and political
3 integration and development. The preservation of universal
4 telephone service is therefore of utmost importance to the
5 state and its citizens.

6 Recent changes in the telecommunications industry,
7 however, both in its structure and in the national policy
8 which governs it, have begun to exert a general, upward
9 pressure on the rates for basic telephone service. Although
10 neither the extent to which basic telephone rates may rise in
11 the future, nor the effect of any such future increases on the
12 general affordability of telephone service can be
13 ascertained at this time, the Legislature finds that
14 anticipatory action should nonetheless be taken to preserve
15 the universal telephone service which has been
16 substantially achieved in this state.

17 All telephone utilities, except cooperative telephone
18 utilities, providing local exchange dial access line service
19 subject to the jurisdiction of the public service commission
20 are therefore directed to file with the commission tariffs
21 providing for the offering of a new class of basic residential
22 service, at a special reduced rate, to certain low-income
23 households. Such tariffs shall be filed after the adoption of
24 the rules and regulations mandated by subsections (b) and
25 (c), section four of this article.

§24-2C-2. Tel-assistance; definitions.

1 The new service herein provided for is known as "tel-
2 assistance service" and consists of an individual,

3 residential local exchange dial access line and an allowance
4 for usage not to exceed two dollars in value. As used in this
5 article, the term "usage" means the local exchange service
6 and the long distance service provided by the telephone
7 utility furnishing the tel-assistance service. In any instance
8 in which an individual measured or message line cannot be
9 provided to the customer, party-line service shall be
10 provided at the tel-assistance rate until such time as an
11 individual measured or message line can be provided.

**§24-2C-3. Monthly rate set by public service commission;
prohibited and permissible charges.**

1 The monthly rate for tel-assistance service shall be set
2 initially by the commission at the lower of (a) the lowest
3 priced service available to the customer at the time of his or
4 her application, or (b) seven dollars and fifty cents. All
5 usage exceeding two dollars in value shall be charged for at
6 the otherwise applicable tariff rate. No other local voice
7 telephone service may be provided to the dwelling place of a
8 tel-assistance customer, nor may individual line foreign
9 zone or foreign exchange service be provided to a tel-
10 assistance customer. A telephone utility may not impose an
11 order processing charge or line charge when an existing
12 customer who is eligible for tel-assistance service changes
13 to such service, nor may any charge be made when a tel-
14 assistance service customer loses his or her eligibility and
15 changes to another class of residential service. However,
16 charges for the initial installation of service for a new
17 customer, or charges for moving a customer's service from
18 one dwelling place to another shall be made at the otherwise
19 applicable tariff rate. The commission may, upon having set
20 the rate initially for tel-assistance service as herein
21 provided, change such rate from time to time upon a finding
22 that is reasonable to do so, and may, in connection
23 therewith increase or decrease the amount of local service
24 usage provided as a part thereof.

**§24-2C-4. Availability of tel-assistance service; determination
of eligibility; promulgation of rules.**

- 1 (a) Tel-assistance service shall be made available only
- 2 to qualified low-income customers who are:
 - 3 (1) Either disabled or age sixty or older; and

4 (2) Social security supplemental security income
5 benefit recipients, aid to dependent children (AFDC)
6 benefit recipients, aid to dependent children-unemployed
7 (AFDC-U) benefit recipients, food stamp recipients or
8 whose total household income is at or below the income
9 level established for social security supplemental security
10 income eligibility.

11 (b) The public service commission shall establish, by
12 rules and regulations, procedures governing the application
13 for and the provision of tel-assistance service and the
14 determination and certification of the revenue deficiency
15 resulting from the provision of tel-assistance service,
16 including, but not limited to, rules and regulations
17 determining both the methods by which telephone utilities
18 shall maintain records pertaining to such deficiency and the
19 methods by which such deficiency shall be calculated. Such
20 rules and regulations shall be promulgated pursuant to
21 section seven, article one of this chapter and adopted within
22 one hundred twenty days of the effective date of this article.

23 (c) The department of human services shall establish, by
24 rules and regulations, procedures to inform persons of their
25 eligibility for tel-assistance service, to assist applicants for
26 tel-assistance service in proving their eligibility therefor,
27 and to determine on a continuing basis the eligibility of
28 persons receiving tel-assistance service and communicate
29 such determinations to the telephone utilities. Initially,
30 such rules and regulations shall be adopted and filed in the
31 state register within one hundred twenty days of the
32 effective date of this article and shall not otherwise be
33 subject to the requirements of chapter twenty-nine-a of this
34 code. Such rules and regulations initially adopted shall
35 become effective immediately upon filing in the state
36 register and remain in effect until supplanted by legislative
37 rules promulgated pursuant to chapter twenty-nine-a of
38 this code. Final approved legislative rules shall be
39 submitted by the department of human services to the
40 legislative rule-making review committee on or before the
41 first day of August, one thousand nine hundred eighty-
42 seven.

§24-2C-5. Recovery of revenue deficiencies.

1 In order to provide the special reduced rate mandated by

2 section one of this article and still maintain the integrity of
3 the earnings of the utilities offering tel-assistance service,
4 the commission shall determine, upon application by any
5 affected utility, that utility's revenue deficiency for the
6 utility's taxable year resulting from the special reduced
7 rates. Upon determining any utility's revenue deficiency,
8 the commission shall issue an order certifying the amount of
9 that deficiency. Certified revenue deficiencies shall
10 thereafter be recovered by the affected utilities as follows:

11 (a) A utility's certified revenue deficiency, if any,
12 resulting from the provision of tel-assistance service shall
13 be allowed as a tax credit against the liability of the utility
14 pursuant to the provisions of article thirteen-g, chapter
15 eleven of this code.

16 (b) After allowance of such a tax credit pursuant to the
17 provisions of article thirteen-g, chapter eleven of this code,
18 a utility's remaining certified revenue deficiency, if any,
19 resulting from the provision of tel-assistance service shall
20 be allowed as a tax credit against the liability of the utility
21 pursuant to the provisions of section eleven-a, article
22 twenty-four, chapter eleven of this code.

CHAPTER 159

(H. B. 1743—By Mr. Speaker, Mr. Albright, and Delegate Swann,
by request of the Executive)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five and six, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article thirteen-c by adding thereto two new sections, designated sections four-a and four-b; to amend and reenact sections one, two, three and six, article thirteen-d of said chapter eleven; and to further amend article thirteen-d by adding thereto a new section, designated section five-a, all relating to credits against certain state taxes; amending the business investment and jobs expansion tax credit by amending and adding definitions; allowing credit for

qualified investment and leased tangible personal property having a useful life and primary lease term of four or more years, and for reasonable and necessary costs of relocating out-of-state corporate headquarters in this state, and for the remaining useful life of four or more years of tangible personal property of the taxpayer used out-of-state and permanently moved to this state for use in a new or expanded business facility or corporate headquarters located in this state; providing for computation and allowance of credit; allowing credit for qualified investment in a project and new jobs created by a project; defining the term project; amending the business and occupation tax credit for industrial expansion and revitalization and for research and development projects by allowing credit for eligible investment and qualified housing development projects; defining terms; providing rules for determining eligible investment in a qualified housing development project; providing for forfeiture of unused tax credits and redetermination of credit in certain instances; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

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

Article

13C. Business Investment and Jobs Expansion Credit.

13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization, for Research and Development Projects and for Housing Development Projects.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-3. Definitions.

§11-13C-4. Amount of credit allowed.

§11-13C-4a. Credit allowed for locating corporate headquarters in this state.

§11-13C-4b. Credit allowable for certified projects.

§11-13C-5. Application of annual credit allowance.

§11-13C-6. Qualified investment.

§11-13C-3. Definitions.

1 (a) *General.*—When used in this article, or in the
2 administration of this article, terms defined in subsec-
3 tion (b) shall have the meanings ascribed to them by this
4 section, unless a different meaning is clearly required
5 by either the context in which the term is used, or by
6 specific definition, in this article.

7 (b) *Terms defined.*

8 (1) *Business.*—The term “business” means any activity
9 taxable under article twelve-a or thirteen (or both) of
10 this chapter, which is engaged in by any person in this
11 state: *Provided*, That on and after the first day of July,
12 one thousand nine hundred eighty-seven, the phrase
13 “taxes imposed by article twelve-a or thirteen (or both)
14 of this chapter” shall mean “taxes imposed by article
15 thirteen, thirteen-a, thirteen-b and twenty-three of this
16 chapter (or any one or combination of such articles of
17 this chapter).”

18 (2) *Business expansion.*—The term “business expan-
19 sion” means capital investment in a new or expanded
20 business facility in this state.

21 (3) *Business facility.*—The term “business facility”
22 means any factory, mining operation, mill, plant,
23 refinery, warehouse, building or complex of buildings
24 located within this state, including the land on which it
25 is located, and all machinery, equipment and other real
26 and personal property located at or within such facility,
27 used in connection with the operation of such facility,
28 in a business that is taxable in this state.

29 (A) “Mining operation” means the place at which a
30 person extracts ores or minerals from the ground. It
31 includes both surface and underground mining
32 operations.

33 (B) “Surface mine” means the surface of land upon
34 which activities are conducted which disturb the natural
35 surface of the land and result in the production of ores

36 or minerals.

37 (C) "Underground mine" means the surface effects
38 associated with the shafts, slopes, lifts or inclines
39 connected with excavations penetrating seams or strata
40 of minerals, and the equipment connected therewith
41 which contribute to the mining, preparation or handling
42 of ores or minerals.

43 (4) *Commissioner or tax commissioner.*—The terms
44 "commissioner" and "tax commissioner" are used
45 interchangeably herein and mean the tax commissioner
46 of the state of West Virginia, or his delegate.

47 (5) *Compensation.*—The term "compensation" means
48 wages, salaries, commissions and any other form of
49 remuneration paid to employees for personal services.

50 (6) *Controlled group.*—The term "controlled group"
51 means one or more chains of corporations connected
52 through stock ownership with a common parent corpo-
53 ration if stock possessing at least fifty percent of the
54 voting power of all classes of stock of each of the
55 corporations is owned directly or indirectly by one or
56 more of the corporations; and the common parent owns
57 directly stock possessing at least fifty percent of the
58 voting power of all classes of stock of at least one of the
59 other corporations.

60 (7) *Corporation.*—The term "corporation" means any
61 corporation, joint-stock company or association, and any
62 business conducted by a trustee or trustees wherein
63 interest or ownership is evidenced by a certificate of
64 interest or ownership or similar written instrument.

65 (8) *Delegate.*—The term "delegate" in the phrase "or
66 his delegate," when used in reference to the tax
67 commissioner, means any officer or employee of the
68 state tax department duly authorized by the tax
69 commissioner directly, or indirectly by one or more
70 redelegations of authority, to perform the functions
71 mentioned or described in this article.

72 (9) *Eligible taxpayer.*—The term "eligible taxpayer"
73 means any person subject to the taxes imposed by article
74 twelve-a or thirteen (or both) of this chapter who makes

75 qualified investment in a new or expanded business
76 facility located in this state that results in the creation
77 of at least fifty new jobs: *Provided*, That on and after
78 the first day of July, one thousand nine hundred eighty-
79 seven, the phrase "taxes imposed by articles thirteen,
80 thirteen-a, thirteen-b and twenty-three of this chapter
81 (or any one or combination of such articles of this
82 chapter)." "Eligible taxpayer" shall also include an
83 affiliated group of taxpayers if such group elects to file
84 a consolidated corporation net income tax return under
85 article twenty-four of this chapter.

86 (10) *Expanded facility*.—The term "expanded facility"
87 means any business facility (other than a new or
88 replacement business facility) resulting from the
89 acquisition, construction, reconstruction, installation or
90 erection of improvements or additions to existing
91 property if such improvements or additions are pur-
92 chased on or after the first day of March, one thousand
93 nine hundred eighty-five, but only to the extent of the
94 taxpayer's qualified investment in such improvements
95 or additions.

96 (11) *Includes and including*.—The terms "includes"
97 and "including," when used in a definition contained in
98 this article, shall not be deemed to exclude other things
99 otherwise within the meaning of the term defined.

100 (12) *New business facility*.—The term "new business
101 facility" means a business facility which satisfies all the
102 requirements of subparagraphs (A), (B), (C), and (D) of
103 this paragraph:

104 (A) The facility is employed by the taxpayer in the
105 conduct of a business the net income of which is taxable
106 under article twenty-one or twenty-four of this chapter.
107 Such facility shall not be considered a new business
108 facility in the hands of the taxpayer if the taxpayer's
109 only activity with respect to such facility is to lease it
110 to another person or persons.

111 (B) Such facility is acquired by, or leased to, the
112 taxpayer on or after the first day of March, one
113 thousand nine hundred eighty-five.

114 (C) The facility was not acquired by the taxpayer from
115 a related person.

116 (D) If such facility was acquired by the taxpayer from
117 an unrelated person (or persons), such facility was not
118 in service or use during the ninety days immediately
119 prior to transfer of the title to such facility, or to the
120 commencement of the term of the lease of such facility,
121 unless upon application of the taxpayer, setting forth
122 good and sufficient cause, the tax commissioner consents
123 to waiving this ninety-day period.

124 (13) *New employee.*—The term “new employee” means
125 a person residing and domiciled in this state, hired by
126 the taxpayer to fill a position for a job in this state,
127 which previously did not exist in the business enterprise
128 in this state, prior to the date on which the taxpayer’s
129 qualified investment is placed in service or use in this
130 state. In no case shall the new employees allowed for
131 purposes of this credit exceed the total increase in the
132 taxpayer’s employment in this state. A person shall be
133 deemed to be a “new employee” if such person’s duties
134 in connection with the operation of the business
135 enterprise are on:

136 (A) A regular, full-time and permanent basis.

137 (1) “Full-time employment” means employment for at
138 least one hundred twenty hours per month at a wage not
139 less than the prevailing state or federal minimum wage,
140 depending on which minimum wage provision is
141 applicable to the business.

142 (2) “Permanent employment” does not include employ-
143 ment that is temporary or seasonal.

144 (B) A part-time basis, provided such person is
145 customarily performing such duties at least twenty
146 hours per week for at least six months during the
147 taxable year.

148 (14) *New job.*—The term “new job” means a job which
149 did not exist in the business of the taxpayer in this state
150 prior to the taxpayer’s qualified investment being made,
151 and which is filled by a new employee.

152 (15) *New property*.—The term “new property” means:

153 (A) Property the construction, reconstruction or
154 erection of which is begun on or after March one, one
155 thousand nine hundred eighty-five; and

156 (B) Property leased or acquired by the taxpayer on or
157 after the first day of March, one thousand nine hundred
158 eighty-five, if the original use of such property commen-
159 ces with the taxpayer and commences after such date.

160 (16) *Original use*.—The term “original use” means the
161 first use to which the property is put, whether or not
162 such use corresponds to the use of the property by the
163 taxpayer.

164 (17) *Partnership and partner*.—The term “partner-
165 ship” includes a syndicate, group, pool, joint venture or
166 other unincorporated organization through or by means
167 of which any business, financial operation or venture is
168 carried on, and which is not a trust or estate, a
169 corporation or a sole proprietorship. The term “partner”
170 includes a member in such a syndicate, group, pool, joint
171 venture or organization.

172 (18) *Person*.—The term “person” includes any natural
173 person, corporation or partnership.

174 (19) *Property purchased for business expansion*.

175 (A) *Included property*.—Except as provided in subpa-
176 ragraph (B), the term “property purchased or leased for
177 business expansion” means real property and improve-
178 ments thereto, and tangible personal property, but only
179 if such real or personal property was constructed,
180 purchased, or leased, by the taxpayer, for use as a
181 component part of a new or expanded business facility,
182 as defined in this section, which is located within West
183 Virginia. This term includes only:

184 (1) Real property and improvements thereto having a
185 useful life of four or more years, that was purchased or
186 constructed on or after the first day of March, one
187 thousand nine hundred eighty-five, by the taxpayer.

188 (2) Real property and improvements thereto, or
189 tangible personal property acquired by written lease

190 having a primary term of ten or more years that
191 commenced and was executed by the parties thereto on
192 or after the first day of March, one thousand nine
193 hundred eighty-five.

194 (3) Tangible personal property purchased by the
195 taxpayer on or after the first day of March, one
196 thousand nine hundred eighty-five, with respect to
197 which depreciation, or amortization in lieu of
198 depreciation, is allowable in determining the personal or
199 corporation net income tax liability of the business
200 taxpayer under article twenty-one or twenty-four of this
201 chapter, and which has a useful life at the time such
202 property is placed in service or use in this state, of four
203 or more years.

204 (4) Tangible personal property acquired by written
205 lease having a primary term of four years or longer, that
206 commenced and was executed by the parties thereto on
207 or after the first day of February, one thousand nine
208 hundred eighty-six, if used as a component part of a new
209 or expanded business facility, shall be included within
210 this definition.

211 (5) Tangible personal property owned or leased, and
212 used by the taxpayer at a business location outside this
213 state which is moved into this state on or after the first
214 day of February, one thousand nine hundred eighty-six,
215 for use as a component part of a new or expanded
216 business facility located in this state: *Provided*, That if
217 the property is owned, it must be depreciable or
218 amortizable personal property for income tax purposes,
219 and have a useful life of four or more years remaining
220 at the time it is placed in service or use in this state,
221 and if the property is leased, the primary term of the
222 lease remaining at the time the leased property is placed
223 in service or use in this state, must be four or more
224 years: *Provided*, That where property was purchased for
225 business expansion by the taxpayer prior to the first day
226 of March, one thousand nine hundred eighty-five, but
227 placed in service or use in this state after such date by
228 the taxpayer, such property shall nevertheless be
229 treated as included property under this subparagraph
230 (A) if such property otherwise qualifies as such under

231 this subparagraph (A), if the tax commissioner, upon
232 application by the taxpayer, certifies that at least fifty
233 new jobs were created by the taxpayer prior to the first
234 day of January, one thousand nine hundred eighty-eight,
235 as a direct result of this capital investment of the
236 taxpayer, and such jobs did not previously exist in this
237 state, determined as of the thirty-first day of January,
238 one thousand nine hundred eighty-six: *Provided, how-*
239 *ever,* That the inclusion of such property shall not give
240 rise to a refund of any taxes administered under this
241 chapter, the liability for which arose prior to the first
242 day of February, one thousand nine hundred eighty-six.

243 (B) *Excluded property.*—The term “property pur-
244 chased or leased for business expansion” shall not
245 include:

246 (1) Property owned or leased by the taxpayer and for
247 which credit was taken under article thirteen-c of this
248 chapter prior to its repeal, on the thirteenth day of
249 April, one thousand nine hundred eighty-five, or under
250 article thirteen-d or thirteen-e of this chapter;

251 (2) Repair costs, including materials used in the
252 repair, unless for federal income tax purposes, the cost
253 of the repair must be capitalized and not expensed;

254 (3) Motor vehicles licensed by the department of motor
255 vehicles: *Provided,* That such property, if purchased or
256 leased on or after the first day of February, one
257 thousand nine hundred eighty-six, shall not be excluded
258 by virtue of this clause (3);

259 (4) Airplanes;

260 (5) Off-premise transportation equipment: *Provided,*
261 That such property, if purchased or leased on or after
262 the first day of February, one thousand nine hundred
263 eighty-six, shall not be excluded by virtue of this clause
264 (5);

265 (6) Property which is primarily used outside this state;
266 and

267 (7) Property which is acquired incident to the
268 purchase of the stock or assets of the seller, unless for

269 good cause shown, the tax commissioner consents to
270 waiving this requirement.

271 (c) *Purchase date.*—Property shall be deemed to have
272 been purchased prior to a specified date only if:

273 (1) The physical construction, reconstruction or
274 erection of the property was begun prior to the specified
275 date, or such property was constructed, reconstructed,
276 erected or acquired pursuant to a written contract as
277 existing and binding on the purchase prior to the
278 specified date;

279 (2) The machinery or equipment was owned by the
280 taxpayer prior to the specified date or was acquired by
281 the taxpayer pursuant to a binding purchase contract
282 which was in effect prior to the specified date; or

283 (3) In the case of leased property, there was a binding
284 written lease or contract to lease identifiable property
285 in effect prior to the specified date.

286 (20) *Purchase.*—The term “purchase” means any
287 acquisition of property, but only if:

288 (A) The property is not acquired from a person whose
289 relationship to the person acquiring it would result in
290 the disallowance of deductions under Section 267 or 707
291 (b) of the United States Internal Revenue Code of 1954,
292 as amended, and in effect on the first day of January,
293 one thousand nine hundred eighty-five;

294 (B) The property is not acquired by one component
295 member of a controlled group from another component
296 member of the same controlled group; and

297 (C) The basis of the property for federal income tax
298 purposes, in the hands of the person acquiring it is not
299 determined:

300 (1) In whole or in part by reference to the federal
301 adjusted basis of such property in the hands of the
302 person from whom it was acquired; or

303 (2) Under Section 1014 (e) of the United States
304 Internal Revenue Code of 1954, as amended, and in
305 effect on the first day of January, one thousand nine

306 hundred eighty-five.

307 (21) *Qualified activity*.—The term “qualified activity”
308 means any business or other activity subject to the tax
309 imposed by article twelve-a or thirteen (or both) of this
310 chapter: *Provided*, That on and after the first day of
311 July, one thousand nine hundred eighty-seven, the
312 phrase “taxes imposed by article twelve-a or thirteen (or
313 both) of this chapter” shall mean “taxes imposed by
314 articles thirteen, thirteen-a, thirteen-b and twenty-three
315 of this chapter (or any one or combination of such
316 articles of this chapter).”

317 (22) *Related person*.—The term “related person”
318 means:

319 (A) A corporation, partnership, association or trust
320 controlled by the taxpayer;

321 (B) An individual, corporation, partnership, association
322 or trust that is in control of the taxpayer;

323 (C) A corporation, partnership, association or trust
324 controlled by an individual, corporation, partnership,
325 association or trust that is in control of the taxpayer; or

326 (D) A member of the same controlled group as the
327 taxpayer.

328 For purposes of subdivisions (20) and (22) of this
329 section, “control,” with respect to a corporation means
330 ownership, directly or indirectly, of stock possessing
331 fifty percent or more of the total combined voting power
332 of all classes of the stock of such corporation entitled to
333 vote. “Control,” with respect to a trust, means
334 ownership, directly or indirectly, of fifty percent or
335 more of the beneficial interest in the principal or income
336 of such trust. The ownership of stock in a corporation,
337 of a capital or profits interest in a partnership or
338 association or of a beneficial interest in a trust shall be
339 determined in accordance with the rules for constructive
340 ownership of stock provided in Section 267 (c) of the
341 United States Internal Revenue Code of 1954, as
342 amended, other than paragraph (3) of such section.

343 (23) *Replacement facility*.—The term “replacement

344 facility” means any property (other than an expanded
345 facility) that replaces or supersedes any other property
346 located within this state that:

347 (A) The taxpayer or a related person used in or in
348 connection with any activity for more than two years
349 during the period of five consecutive years ending on the
350 date the replacement of superseding property is placed
351 in service by the taxpayer.

352 (B) Is not used by the taxpayer or a related person
353 in or in connection with any qualified activity for a
354 continuous period of one year or more commencing with
355 the date the replacement or superseding property is
356 placed in service by the taxpayer.

357 (24) *Taxpayer*.—The term “taxpayer” means any
358 person subject to the tax imposed by article twelve-a or
359 thirteen (or both) of this chapter: *Provided*, That on and
360 after the first day of July, one thousand nine hundred
361 eighty-seven, the phrase “taxes imposed by article
362 twelve-a or thirteen (or both) of this chapter” shall mean
363 “taxes imposed by articles thirteen, thirteen-a, thirteen-b
364 and twenty-three of this chapter (or any one or combina-
365 tion of such articles of this chapter).”

366 (25) *This code*.—The term “this code” means the code
367 of West Virginia, one thousand nine hundred thirty-one,
368 as amended.

369 (26) *This state*.—The term “this state” means the state
370 of West Virginia.

371 (27) *Used property*.—The term “used property” means
372 property acquired after the twenty-eighth day of
373 February, one thousand nine hundred eighty-five, that
374 is not “new property.”

§11-13C-4. Amount of credit allowed.

1 (a) *Credit allowed*.—Eligible taxpayers shall be
2 allowed a credit against the portion of taxes imposed by
3 this state that are attributable to and the consequence
4 of the taxpayer’s qualified investment in a new or
5 expanded business in this state, which results in the
6 creation of new jobs. The amount of this credit shall be

7 determined and applied as hereinafter provided in this
8 article.

9 (b) *Amount of credit.*—The amount of credit allowable
10 is determined by multiplying the amount of the taxpay-
11 er’s “qualified investment” (determined under section
12 four-a or six, or both) in “property purchased for
13 business expansion” (as defined in section three) by the
14 taxpayer’s new jobs percentage (determined under
15 section seven). The product of this calculation estab-
16 lishes the maximum amount of credit allowable under
17 this article, due to the qualified investment.

18 (c) *Application of credit over ten years.*—The amount
19 of credit allowable must be taken over a ten-year period,
20 at the rate of one tenth of the amount thereof per
21 taxable year, beginning with the taxable year in which
22 the taxpayer places the qualified investment in service
23 or use in this state, unless the taxpayer elected to delay
24 the beginning of the ten-year period until the next
25 succeeding taxable year. This election shall be in the
26 annual return filed for the taxable year in which the
27 qualified investment is placed into service or use by the
28 taxpayer. Once made, the election cannot be revoked.
29 The annual credit allowance shall be taken in the
30 manner prescribed in section four of this article.

31 (d) *Placed in service or use.*—For purposes of the
32 credit allowed by this section, property shall be
33 considered placed in service or use in the earlier of the
34 following taxable years:

35 (1) The taxable year in which, under the taxpayer’s
36 depreciation practice, the period for depreciation with
37 respect to such property begins; or

38 (2) The taxable year in which the property is placed
39 in a condition or state of readiness and availability for
40 a specifically assigned function.

**§11-13C-4a. Credit allowed for locating corporate head-
quarters in this state.**

1 (a) *Credit allowed.*—A corporation that presently has
2 its corporate headquarters located outside this state that
3 relocates its corporate headquarters in this state and

4 employs, on a full-time basis, at its new corporate
5 headquarters location, at least fifteen people, who are
6 domiciled in this state, shall be allowed credit under this
7 article, the amount of which shall be determined as
8 provided in subsection (b).

9 (b) *Determination of credit.*—The amount of credit
10 allowed by subsection (a) shall be determined at the
11 election of the taxpayer:

12 (1) By multiplying its adjusted qualified investment
13 by its new jobs percentage (as determined under section
14 seven of this article); or

15 (2) By multiplying its adjusted qualified investment
16 by ten percent.

17 (c) *Application of credit.*—The credit allowed by this
18 section shall be applied in the manner prescribed in
19 section five of this article: *Provided*, That the amount
20 of corporation net income taxes against which the credit
21 allowed by this section may be applied shall be the sum
22 of the corporation net income tax due on adjusted
23 federal taxable income allocated to this state under
24 section seven, article twenty-four of this chapter, plus
25 that portion of the corporation net income tax due on
26 adjusted federal taxable income apportioned to this state
27 under section seven, article twenty-four of this chapter,
28 that is further apportioned to the qualified investment
29 using the payroll factor provided in paragraph (1),
30 subsection (h) of said section five. For all other purposes,
31 the credit allowed by this section shall be treated as
32 credit allowed by section four of this article.

33 (d) *Definitions.*—For purposes of this section:

34 (1) *Adjusted qualified investment.*—The term “adjusted
35 qualified investment” means the taxpayer’s qualified
36 investment as determined under section six of this
37 article, plus the cost of the reasonable and necessary
38 expenses it incurred to relocate its corporate headquar-
39 ters at a location in this state from its present location
40 outside this state.

41 (2) *Corporate headquarters.*—The term “corporate
42 headquarters” means the place at which the corporation

43 has its commercial domicile and from which the
44 business of the corporation is primarily conducted.

45 (3) *Reasonable, and necessary expenses incurred to*
46 *relocate corporate headquarters.*—The phrase “reasona-
47 ble and necessary expenses incurred to relocate corpo-
48 rate headquarters” means only those expenses incurred
49 and paid by the corporation, to unrelated third parties,
50 to move its corporate headquarters and its corporate
51 headquarters employees to this state that are, upon
52 application by the corporation, determined by the tax
53 commissioner to have been both reasonable and neces-
54 sary to effectuate the move.

55 (e) *Effective date.*—The credit allowed by this section
56 shall be allowable for corporate headquarters placed in
57 service or use on or after the first day of February, one
58 thousand nine hundred eighty-six.

§11-13C-4b. Credit allowable for certified projects.

1 (a) *In general.*—A project certified by the tax commis-
2 sioner shall be eligible for the credit allowable by this
3 article. A project eligible for certification under this
4 section is one where:

5 (1) The qualified investment under this article creates
6 at least fifty new jobs but such qualified investment is
7 placed in service or use over a period of three successive
8 tax years: *Provided,* That such qualified investment is
9 made pursuant to a written business facility
10 development plan of the taxpayer providing for an
11 integrated project for investment at one or more new or
12 expanded business facilities, a copy of which must be
13 attached to the taxpayer’s application for project
14 certification and approved by the tax commissioner, and
15 the qualified investment placed in service or use during
16 the first tax year would not have been made without the
17 expectation of making the qualified investment placed
18 in service or use during the next two succeeding tax
19 years;

20 (2) The qualified investment is made by one or more
21 persons, but some or all of the new jobs created at each
22 new or expanded business facility as a result of the

23 qualified investment are created by one or more other
24 persons: *Provided*, That at least fifty new jobs are
25 created at the new or expanded business facility or
26 facilities in which the qualified investment is made, and
27 such jobs are, upon application, certified by the tax
28 commissioner as new jobs created as a direct result of
29 the qualified investment, and that such qualified
30 investment is made pursuant to a written business
31 facility development plan of the taxpayer providing for
32 an integrated project for investment at one or more new
33 or expanded business facilities, a copy of which must be
34 attached to the taxpayer's application for project
35 certification and approved by the tax commissioner.

36 (3) The qualified investment is made by one or more
37 persons but some or all of the new jobs created as a
38 direct result of the qualified investment are created by
39 one or more other persons: *Provided*, That at least fifty
40 new jobs are created within a seventy-five mile radius
41 of each new or expanded business facility in which the
42 qualified investment is made, and such jobs are, upon
43 application, certified by the tax commissioner as being
44 new jobs created as a direct result of the qualified
45 investment, and that such qualified investment is made
46 pursuant to a written business facility development plan
47 of the taxpayer providing for an integrated project for
48 investment at one or more new or expanded business
49 facilities, a copy of which must be attached to the
50 taxpayer's application for project certification and
51 approved by the tax commissioner.

52 (b) *Application for certification.*—The application for
53 certification of a project under this section shall be filed
54 with the tax commissioner prior to the date on which
55 the capital investment for which project certification is
56 sought is first placed in service or use in this state. This
57 application shall be approved in writing by all the
58 participants in the project and shall contain such
59 information as the tax commissioner may require to
60 determine whether the project should be certified as
61 eligible for credit under this article.

62 (c) *Taking of credit.*

63 (1) If the certified project for which qualified invest-
64 ment is made involves one or more persons making the
65 capital investment and one or more persons, or a
66 combination thereof, creating at least fifty new jobs at
67 the site of the new or expanded business facility or
68 facilities, then credit shall be allowed under this article
69 for the certified project based upon the qualified
70 investment in the certified project (as determined under
71 section six) multiplied by the project's new-jobs percent-
72 tage (determined under section seven).

73 (2) If the certified project for which qualified invest-
74 ment is made involves one or more persons making the
75 capital investment and one or more persons, or a
76 combination thereof, creating at least fifty new jobs
77 located within a seventy-five mile radius of each new or
78 expanded business facility in which the qualified
79 investment is made, then credit shall be allowed under
80 this article for the certified project based upon the
81 qualified investment in the certified project (as deter-
82 mined under section six) multiplied by fifty percent.

83 (3) The amount of allowable credit as determined
84 under subdivisions (1) and (2) above, shall be applied as
85 provided in section five and may be claimed by one
86 participant in the project, or divided among the several
87 participants in the project, in the manner provided in
88 the project's application to the tax commissioner for
89 certification under this section. Such allocation, if
90 approved by the tax commissioner, shall constitute a
91 binding election by the participants in the project for
92 the entire term during which the credit attributable to
93 the qualified investment in the certified project may be
94 applied to reduce tax liabilities. The participant or
95 participants claiming the credit for qualified invest-
96 ments in a certified project shall annually file with their
97 income tax returns filed under this chapter:

98 (A) Certification that the participant's qualified
99 investment property continues to be used in the project
100 and if disposed of during the tax year, was not disposed
101 of prior to expiration of its useful life;

102 (B) Certification that the new jobs created by the

103 project's qualified investment continue to exist and are
104 filled by persons who are residents of this state; and

105 (C) Such other information as the tax commissioner
106 requires to determine continuing eligibility to claim the
107 annual credit allowance for the project's qualified
108 investment.

109 (d) *Terms defined.*—For purposes of this section:

110 (1) *New employee.*—The term “new employee” means
111 a person residing and domiciled in this state, hired by
112 a participant to fill a position for a job which previously
113 did not exist in this state prior to the date on which the
114 project's qualified investment is placed in service or use
115 in this state. In no case shall the new employees allowed
116 for purposes of this credit exceed the total increases in
117 the number of persons employed by the project's
118 participants (considered as a group) in this state. A
119 person shall be deemed to be a “new employee” if such
120 person's duties in connection with the operation of the
121 certified project are on:

122 (A) A regular, full-time and permanent basis.

123 (1) “Full-time employment” means employment for at
124 least one hundred twenty hours per month at a wage not
125 less than the prevailing state or federal minimum wage,
126 depending on which minimum wage provision is
127 applicable to the business.

128 (2) “Permanent employment” does not include employ-
129 ment that is temporary or seasonal.

130 (B) A part-time basis, provided such person is
131 customarily performing such duties at least twenty
132 hours per week for at least six months during the
133 taxable year.

134 (2) *New job.*—The term “new job” means a job which
135 did not exist in this state prior to the project's qualified
136 investment being made, and which is filled by a new
137 employee.

138 (3) *Participant.*—The term “participant” means any
139 person who directly makes a capital investment in a
140 certified project, or who employs persons filling the jobs

141 certified by the tax commissioner as being new jobs
142 created as a direct result of the project's qualified
143 investment.

144 (e) *Effective date.*—This section shall apply to capital
145 investment made on or after the first day of February,
146 one thousand nine hundred eighty-six.

§11-13C-5. Application of annual credit allowance.

1 (a) *In general.* — The aggregate annual credit
2 allowance for the current taxable year is an amount
3 equal to the sum of:

4 (1) The one-tenth part allowed under section four for
5 qualified investment placed into service or use during
6 a prior taxable year, plus

7 (2) The one-tenth part allowed under section four for
8 qualified investment placed into service or use during
9 the current taxable year, plus

10 (3) The one-tenth part allowed under section four-a for
11 locating corporate headquarters in this state.

12 (b) *Application of current year annual credit allo-*
13 *wance.* — The amount determined under subsection (a)
14 shall be allowed as a credit against that portion of the
15 taxpayer's state tax liability which is attributable to and
16 the direct result of the taxpayer's qualified investment,
17 and shall be applied as provided in subsections (c)
18 through (j), both inclusive.

19 (c) *Business and occupation taxes.*

20 (1) That portion of the allowable credit attributable to
21 qualified investment in a business or other activity
22 subject to the taxes imposed by article thirteen of this
23 chapter, shall first be applied to reduce up to eighty
24 percent of the taxes imposed by article thirteen of this
25 chapter for the taxable year (determined before appli-
26 cation of allowable credits against tax and the annual
27 exemption).

28 (2) If the taxes due under said article thirteen are not
29 solely attributable to and the direct result of the
30 taxpayer's qualified investment in a business or other

31 activity taxable under article thirteen of this chapter,
32 the amount of such taxes, which are so attributable,
33 shall be determined by multiplying the amount of taxes
34 due under said article thirteen, for the taxable year
35 (determined before application of any allowable credits
36 against tax and the annual exemption), by a fraction, the
37 numerator of which is all wages, salaries and other
38 compensation paid during the taxable year to all
39 employees of the taxpayer employed in this state, whose
40 positions are directly attributable to the qualified
41 investment in a business or other activity taxable under
42 article thirteen of this chapter. The denominator of the
43 fraction shall be the wages, salaries and other
44 compensation paid during the taxable year to all
45 employees of the taxpayer employed in this state, whose
46 positions are directly attributable to the business or
47 other activity of the taxpayer, that is taxable under
48 article thirteen of this chapter.

49 (3) The annual exemption allowed by section three of
50 said article thirteen, plus any credits allowable under
51 articles thirteen-d and thirteen-e of this chapter, shall
52 be applied against and reduce only the portion of article
53 thirteen taxes not apportioned to the qualified
54 investment under this article: *Provided*, That any excess
55 exemption or credits may be applied against the amount
56 of article thirteen taxes apportioned to the qualified
57 investment under this article, that is not offset by the
58 amount of annual credit against such taxes allowed
59 under this article for the taxable year, unless their
60 application is otherwise prohibited by this chapter.

61 (d) *Carrier income taxes.*

62 (1) That portion of the allowable credit attributable to
63 qualified investment in a business or other activity
64 subject to the taxes imposed by article twelve-a of this
65 chapter shall first be applied to reduce up to eighty
66 percent of the taxes imposed by article twelve-a of this
67 chapter, for the taxable year.

68 (2) If the taxes due under said article twelve-a are not
69 solely attributable to and the direct result of the
70 taxpayer's qualified investment in a business or other

71 activity taxable under article twelve-a of this chapter,
72 the amount of such taxes, which are so attributable,
73 shall be determined by multiplying the amount of taxes
74 due under said article twelve-a for the taxable year, by
75 a fraction, the numerator of which is all wages, salaries
76 and other compensation paid during the taxable year to
77 all employees of the taxpayer employed in this state,
78 whose positions are directly attributable to the qualified
79 investment in a business or other activity taxable under
80 article twelve-a of this chapter. The denominator of the
81 fraction shall be the wages, salaries and other compen-
82 sation paid during the taxable year to all employees of
83 the taxpayer, employed in this state, whose positions are
84 directly attributable to the business or other activity of
85 the taxpayer that is taxable under article twelve-a of
86 this chapter.

87 (e) *Severance taxes.*

88 (1) On and after the first day of July, one thousand
89 nine hundred eighty-seven, that portion of the allowable
90 credit attributable to qualified investment in a business
91 or other activity subject to the tax imposed by article
92 thirteen-a of this chapter, and qualified investment in
93 a business or activity that was subject to the tax imposed
94 by article thirteen of this chapter prior to said first day
95 of July, but on and after said first day of July, is subject
96 to the tax imposed by article thirteen-a of this chapter,
97 shall first be applied to reduce up to eighty percent of
98 the taxes imposed by article thirteen-a of this chapter
99 for the taxable year (determined before application of
100 any allowable credits against tax).

101 (2) If the taxes due under said article thirteen-a are
102 not solely attributable to and the direct result of the
103 taxpayer's qualified investment in a business or other
104 activity taxable under article thirteen-a of this chapter,
105 the amount of such taxes which are so attributable, shall
106 be determined by multiplying the amount of taxes due
107 under said article thirteen-a for the taxable year
108 (determined before application of any allowable credits
109 against tax), by a fraction, the numerator of which is
110 all wages, salaries and other compensation paid during
111 the taxable year to all employees of the taxpayer

112 employed in this state, whose positions are directly
113 attributable to the qualified investment in a business or
114 other activity taxable under article thirteen-a of this
115 chapter. The denominator of the fraction shall be the
116 wages, salaries and other compensation paid during the
117 taxable year to all employees of the taxpayer employed
118 in this state, whose positions are directly attributable to
119 the business or other activity of the taxpayer that is
120 taxable under article thirteen-a of this chapter.

121 (3) Any credits allowable under articles thirteen-d and
122 thirteen-e of this chapter shall be applied against and
123 reduce only the portion of article thirteen-a taxes not
124 apportioned to the qualified investment under this
125 article: *Provided*, That any excess credits may be
126 applied against the amount of article thirteen taxes
127 apportioned to the qualified investment under this
128 article, that is not offset by the amount of annual credit
129 against such taxes allowed under this article for the
130 taxable year, unless their application is otherwise
131 prohibited by this chapter.

132 (f) *Telecommunications taxes.*

133 (1) On and after the first day of July, one thousand
134 nine hundred eighty-seven, that portion of the allowable
135 credit attributable to qualified investment in a business
136 or other activity subject to the taxes imposed by article
137 thirteen-b of this chapter, shall first be applied to reduce
138 up to eighty percent of the taxes imposed by article
139 thirteen-b of this chapter for the taxable year (deter-
140 mined before application of allowable credits against
141 tax) and qualified investment in a business or activity
142 that was subject to the taxes imposed by article twelve-
143 a of this chapter prior to said first day of July, but on
144 and after said first day of July is subject to the tax
145 imposed by article thirteen-b of this chapter.

146 (2) If the taxes due under said article thirteen-b are
147 not solely attributable to and the direct result of the
148 taxpayer's qualified investment in a business or other
149 activity taxable under article thirteen-b of this chapter,
150 the amount of such taxes, which are so attributable,
151 shall be determined by multiplying the amount of taxes

152 due under said article thirteen-b for the taxable year
153 (determined before application of any allowable credits
154 against tax), by a fraction, the numerator of which is
155 all wages, salaries and other compensation paid during
156 the taxable year to all employees of the taxpayer
157 employed in this state whose positions are directly
158 attributable to the qualified investment in a business or
159 other activity taxable under article thirteen-b of this
160 chapter. The denominator of the fraction shall be the
161 wages, salaries and other compensation paid during the
162 taxable year to all employees of the taxpayer employed
163 in this state whose positions are directly attributable to
164 the business or other activity of the taxpayer that is
165 taxable under article thirteen-b of this chapter.

166 (g) *Business franchise tax.*

167 (1) On and after the first day of July, one thousand
168 nine hundred eighty-seven, that portion of the allowable
169 credit attributable to qualified investment in a business
170 or activity subject to the taxes imposed by article
171 twenty-three of this chapter, and qualified investment
172 in a business or activity that was subject to the taxes
173 imposed by article thirteen of this chapter prior to said
174 first day of July, but on and after said first day of July,
175 is subject to the tax imposed by article twenty-three of
176 this chapter, shall first be applied to reduce up to eighty
177 percent of the taxes imposed by article twenty-three of
178 this chapter for the taxable year (determined after
179 application of the credits against tax provided in section
180 seventeen of said article twenty-three, but before
181 application of any other allowable credits against tax).

182 (2) If the taxes due under said article twenty-three are
183 not solely attributable to and the direct result of the
184 taxpayer's qualified investment in a business or other
185 activity taxable under article twenty-three, for the
186 taxable year (determined after application of the credits
187 against tax provided in section seventeen of said article
188 twenty-three, but before application of any other
189 allowable credits), by a fraction, the numerator of which
190 is all wages, salaries and other compensation paid
191 during the taxable year to all employees of the taxpayer
192 employed in this state, whose positions are directly

193 attributable to the qualified investment in a business or
194 other activity taxable under article twenty-three of this
195 chapter. The denominator of the fraction shall be wages,
196 salaries and other compensation paid during the taxable
197 year to all employees of the taxpayer employed in this
198 state, whose positions are directly attributable to the
199 business or other activity of the taxpayer that is taxable
200 under article twenty-three of this chapter.

201 (3) Any credits allowable under articles thirteen-d and
202 thirteen-e of this chapter shall be applied against and
203 reduce only the portion of article twenty-three taxes not
204 apportioned to the qualified investment under this
205 article: *Provided*, That any excess exemption or credits
206 may be applied against the amount of article twenty-
207 three taxes apportioned to the qualified investment
208 under this article that is not offset by the amount of
209 annual credit against such taxes allowed under this
210 article for the taxable year, unless their application is
211 otherwise prohibited by this chapter.

212 (h) *Corporation net income taxes.*

213 (1) After application of subsections (c) through (g),
214 both inclusive of this section, any unused credit shall
215 next be applied to reduce up to eighty percent of the
216 taxes imposed by article twenty-four of this chapter, for
217 the taxable year (determined before application of
218 allowable credits against tax).

219 (2) If the taxes due under said article twenty-four
220 (determined before application of allowable credits
221 against tax) are not solely attributable to and the direct
222 result of the taxpayer's qualified investment, the amount
223 of such taxes which are so attributable, shall be
224 determined by multiplying the amount of taxes due
225 under said article twenty-four for the taxable year
226 (determined before application of allowable credits
227 against tax), by a fraction, the numerator of which is
228 all wages, salaries and other compensation paid during
229 the taxable year to all employees of the taxpayer
230 employed in this state whose positions are directly
231 attributable to the qualified investment. The denomina-
232 tor of the fraction shall be the wages, salaries and other

233 compensation paid during the taxable year to all
234 employees of the taxpayer employed in this state.

235 (3) Any credits allowable under article twenty-four of
236 this chapter shall be applied against and reduce only the
237 amount of article twenty-four taxes not apportioned to
238 the qualified investment under this article: *Provided*,
239 That any excess credits may be applied against the
240 amount of article twenty-four taxes apportioned to the
241 qualified investment under this article that is not offset
242 by the amount of annual credit against such taxes
243 allowed under this article for the taxable year, unless
244 their application is otherwise prohibited by this chapter.

245 (i) *Personal income taxes.*

246 (1) If the person making the qualified investment is
247 an electing small business corporation (as defined in
248 Section 1361 of the United States Internal Revenue Code
249 of 1954, as amended), a partnership or a sole proprie-
250 torship, then any unused credit (after application of
251 subsections (c), (d), (e), (f) and (g)) shall be allowed as
252 a credit against up to eighty percent of the taxes
253 imposed by article twenty-one of this chapter on the
254 income from business or other activity subject to tax
255 under article twelve-a, article thirteen, article thirteen-a,
256 article thirteen-b or article twenty-three of this chapter.

257 (2) Electing small business corporations, partnerships
258 and other unincorporated organizations shall allocate
259 the credit allowed by this article among its members in
260 the same manner as profits and losses are allocated for
261 the taxable year.

262 (3) If the amount of taxes due under article twenty-
263 one of this chapter (determined before application of
264 allowable credits against tax) that is attributable to
265 business, is not solely attributable to and the direct
266 result of the qualified investment of the electing small
267 business corporation, partnership, other unincorporated
268 organization or sole proprietorship, the amount of such
269 taxes which are so attributable shall be determined by
270 multiplying the amount of taxes due under said article
271 twenty-one (determined before application of allowable
272 credits against tax), that is attributable to business by

273 a fraction, the numerator of which is all wages, salaries
274 and other compensation paid during the taxable year to
275 all employees of the electing small business corporation,
276 partnership, other unincorporated organization or sole
277 proprietorship employed in this state, whose positions
278 are directly attributable to the qualified investment.
279 The denominator of the fraction shall be the wages,
280 salaries and other compensation paid during the taxable
281 year to all employees of the taxpayer.

282 (4) No credit shall be allowed under this section
283 against any employer withholding taxes imposed by
284 article twenty-one of this chapter.

285 (j) *Ad valorem property taxes; unemployment taxes and*
286 *workers' compensation premiums.*

287 (1) After application of subsections (a) through (i),
288 both inclusive, of this section, any unused credit shall
289 be applied as a rebate for payment of the sum of the
290 following amounts:

291 (A) Eighty percent of the ad valorem property taxes
292 imposed by levying bodies pursuant to article eight of
293 this chapter, for the taxable year (including payments
294 in lieu of such taxes), on property of the taxpayer that
295 is directly attributable to the qualified investment
296 (including property having a useful life of less than four
297 years) of the taxpayer, in the new or expanded business
298 facility of the taxpayer resulting in new jobs; plus

299 (B) Eighty percent of the taxes imposed by article
300 five, chapter twenty-one-a of this code for the taxable
301 year. If the taxes due under said article five are not
302 solely attributable to and the direct result of the
303 taxpayer's qualified investment, the amount of such
304 taxes which are so attributable shall be determined by
305 multiplying the amount of taxes due under article five,
306 chapter twenty-one-a of this code, by a fraction, the
307 numerator of which is all wages, salaries and other
308 compensation paid during the taxable year to employees
309 of the taxpayer whose positions are directly attributable
310 to the qualified investment, and the denominator of
311 which is the wages, salaries and other compensation
312 paid during the taxable year to all employees of the

313 taxpayer in this state; plus

314 (C) Twenty percent of the workers' compensation
315 premiums imposed by article two, chapter twenty-three
316 of this code, for the taxable year. If the premiums due
317 under article two of said chapter twenty-three, for the
318 taxable year, are not solely attributable to and the direct
319 result of the taxpayer's qualified investment, the amount
320 of such premiums which are so attributable shall be
321 determined by multiplying the amount of premiums due
322 under article two, chapter twenty-three of this code for
323 the taxable year, by a fraction, the numerator of which
324 is all wages, salaries and compensation paid during the
325 taxable year to employees of the taxpayer whose
326 positions are directly attributable to the qualified
327 investment, and the numerator of which is the wages,
328 salaries and other compensation paid during the taxable
329 year to all employees of the taxpayer, in this state.

330 (2) A taxpayer eligible to claim this rebate shall apply
331 either the amount of the unused credit or the sum
332 determined under paragraph (1), whichever is less,
333 against the remaining twenty percent of the taxes
334 imposed by articles twelve-a, thirteen, thirteen-a,
335 thirteen-b, twenty-one, twenty-three and twenty-four of
336 this chapter, attributable to the qualified investment
337 under this article. If any amount of rebate remains after
338 its application against the remaining twenty percent of
339 taxes as aforesaid, the amount remaining shall be
340 carried forward to each ensuing tax year until used or
341 the expiration of the twelfth subsequent tax year in
342 which the qualified investment was placed in service or
343 use in this state by the taxpayer.

344 (k) *Unused credit forfeited.*—If any credit remains
345 after application of subsection (b), the amount thereof
346 shall be forfeited. No carryover to a subsequent taxable
347 year or carryback to a prior taxable year shall be
348 allowed for the amount of any unused portion of any
349 annual credit allowance, except as specifically provided
350 in subsection (j).

351 (l) *Effective date.*—This section, as amended, shall be
352 effective upon passage. It shall be retroactive, and shall

353 be in lieu of the method provided by this section for
 354 application of this credit prior to this amendment, for
 355 qualified investment made on or after the first day of
 356 March, one thousand nine hundred eighty-five.

§11-13C-6. Qualified investment.

1 (a) *General.*—The qualified investment in property
 2 purchased or leased for business expansion shall be the
 3 applicable percentage of the cost of each property
 4 purchased or leased for the purpose of business expansion
 5 which is placed in service or use in this state by
 6 the taxpayer during the taxable year.

7 (b) *Applicable percentage.*—For the purpose of subsection
 8 (a), the applicable percentage of any property shall
 9 be determined under the following table:

10 If useful life is:	The applicable percentage is:
11 4 years or more but less than 6 years.....	33 1/3%
12 6 years or more but less than 8 years.....	66 2/3%
13 8 years or more	100%

14 The useful life of any property, for purposes of this
 15 section, shall be determined as of the date such property
 16 is first placed in service or use in this state by the
 17 taxpayer, determined in accordance with federal income
 18 tax law.

19 (c) *Cost.*—For purposes of subsection (a), the cost of
 20 each property purchased for business expansion shall be
 21 determined under the following rules:

22 (1) *Trade-ins.*—Cost shall not include the value of
 23 property given in trade or exchange for the property
 24 purchased for business expansion.

25 (2) *Damaged, destroyed or stolen property.*—If prop-
 26 erty is damaged or destroyed by fire, flood, storm or
 27 other casualty, or is stolen, then the cost of replacement
 28 property shall not include any insurance proceeds
 29 received in compensation for the loss.

30 (3) *Rental property.*

31 (A) The cost of real property acquired by written lease
 32 for a primary term of ten years or longer shall be one

33 hundred percent of the rent reserved for the primary
34 term of the lease, not to exceed twenty years.

35 (B) The cost of tangible personal property acquired by
36 written lease for a primary term of:

37 (i) Four years, or longer, shall be one third of the rent
38 reserved for the primary term of the lease;

39 (ii) Six years, or longer, shall be two thirds of the rent
40 reserved for the primary term of the lease; or

41 (iii) Eight years, or longer, shall be one hundred
42 percent of the rent reserved for the primary term of the
43 lease, not to exceed twenty years: *Provided*, That in no
44 event shall rent reserved include rent for any year
45 subsequent to expiration of the book life of the
46 equipment, determined using the straight-line method
47 of depreciation.

48 (4) *Property purchased for multiple use.*—In the case
49 of property purchased for use as a component part of
50 a new or expanded business taxable under article
51 twelve-a of this chapter, and use as a component part
52 of a new or expanded business taxable under article
53 thirteen of this chapter, the cost thereof shall be
54 apportioned between such businesses. The amount
55 apportioned to each such new or expanded business for
56 which credit is allowed under this article, shall be
57 considered as a qualified investment subject to the
58 conditions and limitations of this article.

59 (5) *Self-constructed property.*—In the case of self-
60 constructed property, the cost thereof shall be the
61 amount properly charged to the capital account for
62 depreciation in accordance with federal income tax law.

63 (6) *Transferred property.*—The cost of property used
64 by the taxpayer out-of-state and then brought into this
65 state, shall be determined based on the remaining useful
66 life of the property at the time it is placed in service
67 or use in this state, and the cost shall be the original
68 cost of the property to the taxpayer less straight line
69 depreciation allowable for the tax years or portions
70 thereof taxpayer used the property outside this state. In
71 the case of leased tangible personal property, cost shall

72 be based on the period remaining in the primary term
73 of the lease after the property is brought into this state
74 for use in a new or expanded business facility of the
75 taxpayer, and shall be the rent reserved for the
76 remaining period of the primary term of the lease, not
77 to exceed twenty years, or the remaining useful life of
78 the property (determined as aforesaid), whichever is
79 less.

80 (7) *Natural resources in place.*—In the case of natural
81 resources in place, the property must be capable of
82 sustained production for a period of at least ten years.
83 If this qualification is met, then the qualified investment
84 is one hundred percent of the purchase price of the
85 natural resource in place that is attributable to ten years
86 of production, but not more than twenty years of
87 production. If such price is not quantifiable at the time
88 the mining operation is placed into production, cost shall
89 be determined annually and shall be the amount of
90 royalties actually paid to the owner of the natural
91 resource in place during each year for a total period of
92 ten years. The amount of such royalties multiplied by
93 the taxpayer's new jobs percentage (determined at the
94 time the mining operation is placed in service or use)
95 divided by ten establishes the credit allowable each year
96 for ten successive years beginning with the year in
97 which the royalties were paid.

**ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZA-
TION, FOR RESEARCH AND DEVELOPMENT
PROJECTS AND FOR HOUSING DEVELOPMENT
PROJECTS.**

- §11-13D-1. Legislative findings and purpose.
§11-13D-2. Definitions.
§11-13D-3. Amount of credit allowed for industrial expansion or revitali-
zation, for eligible research and development projects, and for
qualified housing development projects.
§11-13D-5a. Eligible investment for qualified housing development project.
§11-13D-6. Forfeiture of unused tax credits; redetermination of credit
required.

§11-13D-1. Legislative findings and purpose.

- 1 The Legislature finds that the encouragement of the
2 location of new industry in this state; the expansion,

3 growth and revitalization of existing industrial facilities
4 in this state; the conduct of research and development
5 in this state, for purposes of expanding markets for sales
6 and uses of this state's natural resources and industrial
7 products and the construction of residential housing are
8 all in the public interest and promote the general
9 welfare of the people of this state. In order to encourage
10 capital investment in this state and thereby increase
11 employment and economic development, there is hereby
12 provided a business and occupation tax credit for
13 industrial expansion and revitalization in this state, for
14 certain research and development related expenditures
15 in this state, and for certain housing development
16 related expenditures in this state.

§11-13D-2. Definitions.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in
3 article thirteen of this chapter, unless a different
4 meaning is clearly required by the context of its use or
5 by definition in this article.

6 (b) For purpose of this article, the term:

7 (1) "Eligible investment" means that amount deter-
8 mined under either section four of this article, for
9 investment in a new or expanded or revitalized indus-
10 trial facility, or under section five of this article, in the
11 case of an eligible research and development project, or
12 under section five-a for a qualified housing development
13 project.

14 (2) "Eligible taxpayer" means an industrial taxpayer
15 who purchases new property for the purpose of indus-
16 trial expansion, or for the purpose of revitalizing an
17 existing industrial facility in this state; or a taxpayer
18 who purchases property or services (or both) for the
19 purpose of conducting an eligible research and
20 development project in this state or for the purpose of
21 constructing a qualified housing development project in
22 this state.

23 (3) "Eligible research and development project" means
24 a research and development project engaged in or

25 conducted within this state, by a person who is engaged
26 in this state in the business of producing natural
27 resources or in an industrial business when such
28 research and development project is conducted for
29 purposes relating to the technical, economic, financial,
30 engineering or marketing aspects of expanding markets
31 for, and increasing sales of, this state's natural resource
32 products, or industrial products (or both).

33 (4) "Industrial business" means any privilege taxable
34 under section two-b or two-m, article thirteen of this
35 chapter, and includes a manufacturing service taxable
36 under section two-h of said article: *Provided*, That on
37 and after the first day of July, one thousand nine
38 hundred eighty-seven, the term "industrial business"
39 shall mean the business of manufacturing, compounding
40 or preparing tangible personal property for sale, profit
41 or commercial use, the business of generating electric
42 power, and the business of providing a manufacturing
43 service, which were taxable, respectively, under sections
44 two-b, two-m and two-h, article thirteen of this chapter,
45 on the first day of January, one thousand nine hundred
46 eighty-five.

47 (5) "Industrial facility" means any factory, mill, plant,
48 refinery, warehouse, buildings or complex of buildings
49 located within this state, including the land on which it
50 is located, and all machinery, equipment and other real
51 and tangible personal property located at or within such
52 facility used in connection with the operation of such
53 facility in an industrial business.

54 (6) "Industrial revitalization" means capital invest-
55 ment in an industrial facility located in this state to
56 replace or modernize buildings, equipment, machinery
57 and other tangible personal property used in connection
58 with the operation of such facility in an industrial
59 business of the taxpayer, including the acquisition of
60 any real property necessary to the industrial
61 revitalization.

62 (7) "Industrial expansion" means capital investment in
63 a new or expanded industrial facility in this state.

64 (8) "Industrial taxpayer" means any person subject to

65 business and occupation taxes under article thirteen of
66 this chapter, exercising any privilege taxable under
67 section two-b or two-m of said article thirteen, or
68 providing a manufacturing service taxable under
69 section two-h of said article thirteen: *Provided*, That on
70 and after the first day of July, one thousand nine
71 hundred eighty-seven, "industrial taxpayer" shall mean
72 any person subject to tax under section two-m, article
73 thirteen of this chapter; or any person subject to tax
74 under article thirteen-a or twenty-three of this chapter
75 engaging in any activity that was taxable under section
76 two-b, article thirteen of this chapter, on the first day
77 of January, one thousand nine hundred eighty-five; or
78 any person taxable under article twenty-three of this
79 chapter providing a manufacturing service that was
80 taxable under section two-h, article thirteen of this
81 chapter on the first day of January, one thousand nine
82 hundred eighty-five.

83 (9) "Manufacturing service" means a privilege that
84 would be taxable under section two-b, article thirteen
85 of this chapter, if title to the raw materials used in the
86 manufacturing process was vested in the taxpayer
87 exercising the privilege taxable under section two-h of
88 said article thirteen.

89 (10) Subject to paragraph (13) below, "property
90 purchased for an eligible research and development
91 project" means real property, and improvements
92 thereto, and tangible personal property, but only if such
93 real or personal property is constructed or purchased on
94 or after the first day of July, one thousand nine hundred
95 eighty-five, for use as a component part of an eligible
96 research and development project which is located
97 within this state on or after the first day of July, one
98 thousand nine hundred eighty-five. This term includes
99 only tangible personal property with respect to which
100 depreciation or amortization, in lieu of depreciation, is
101 allowable in determining the personal income tax or
102 corporation net income tax liability of the purchaser
103 under article twenty-one or twenty-four of this chapter.
104 Property acquired by written lease for a term of ten
105 years or longer, if used as a component part of an

106 eligible research and development project, shall be
107 included within this definition.

108 (11) Subject to paragraph (13) below, "property
109 purchased for industrial expansion" means real prop-
110 erty, and improvements thereto, and tangible personal
111 property, but only if such property was constructed, or
112 purchased, on or after the first day of July, one thousand
113 nine hundred sixty-nine, for use as a component part of
114 a new or expanded industrial facility (as defined in
115 paragraph five of this subsection) located within this
116 state. This term includes only tangible personal prop-
117 erty with respect to which depreciation, or amortization
118 in lieu of depreciation, is allowable in determining the
119 personal income tax or corporation net income tax
120 liability of the industrial taxpayer under articles
121 twenty-one or twenty-four of this chapter, and has a
122 useful life, at the time such property is placed in service
123 or use in this state, of four years or more. Property
124 acquired by written lease, for a primary term of ten
125 years or longer, if used as a component part of a new
126 or expanded industrial facility, shall be included within
127 this definition.

128 (12) Subject to paragraph (13) below, "property
129 purchased for industrial revitalization" means real
130 property, and improvements thereto, and new tangible
131 personal property, but only if such property was
132 constructed, or purchased, on or after the first day of
133 July, one thousand nine hundred eighty-one, for use as
134 a component part of an ongoing industrial facility (as
135 defined in subdivision (5) of this subsection) located
136 within this state. This term includes only tangible
137 personal property with respect to which depreciation is
138 allowable in determining the personal income tax or
139 corporation net income tax liability of the industrial
140 taxpayer under article twenty-one or twenty-four of this
141 chapter, and has a useful life at the time the property
142 is placed in service or use in this state of four years or
143 more. Property acquired by written lease for a primary
144 term of ten years or longer, if used as a component part
145 of an industrial revitalization, shall be included within
146 this definition.

147 (13) "Property purchased for industrial expansion,"
148 "property purchased for industrial revitalization" and
149 "property purchased for an eligible research and
150 development project" and "property purchased for a
151 qualified housing development project" shall not
152 include:

153 (A) Repair costs including materials used in the
154 repair, unless, for federal income tax purposes, the cost
155 of the repair must be capitalized and not expensed;

156 (B) Motor vehicles licensed by the department of
157 motor vehicles;

158 (C) Airplanes;

159 (D) Off-premise transportation equipment;

160 (E) Property which is primarily used outside this
161 state; and

162 (F) Property which is acquired incident to the
163 purchase of the stock or assets of an industrial taxpayer,
164 which property was or had been used by the seller in
165 his industrial business in this state, or which property
166 was previously designated "property purchased for
167 industrial expansion" or "property purchased for
168 industrial revitalization," or "property purchased for an
169 eligible research and development project," or "property
170 purchased for a qualified housing development project"
171 and used to qualify for business and occupation tax
172 credit for industrial expansion or revitalization, or for
173 an eligible research and development project, or for a
174 qualified housing development project.

175 (14) Subject to subdivision (13) above, property
176 purchased for a qualified housing development project
177 means real property, and improvements thereto, and
178 tangible personal property incorporated into real
179 property (whether or not attached thereto), but only if
180 such real or tangible personal property was constructed,
181 or purchased, on or after the first day of July, one
182 thousand nine hundred eighty-six, for use as a compo-
183 nent part of a housing development project (as defined
184 in subdivision five-a of this subsection) located within
185 this state.

186 (15) Property shall be deemed to have been purchased
187 prior to a specified date only if:

188 (A) The physical construction, reconstruction or
189 erection of the property was begun prior to the specified
190 date, or such property was constructed, reconstructed,
191 erected or acquired pursuant to a written contract as
192 existing and binding on the taxpayer prior to the
193 specified date;

194 (B) The machinery or equipment was owned by the
195 taxpayer prior to the specified date or was acquired by
196 the taxpayer pursuant to a binding purchase contract
197 which was in effect prior to such date; or

198 (C) In the case of leased property, there was a binding
199 written lease or contract to lease identifiable property
200 in effect prior to the specified date.

201 (16) "Taxpayer" means any person taxable under
202 article thirteen of this chapter: *Provided*, That on and
203 after the first day of July, one thousand nine hundred
204 eighty-seven, "taxpayer" shall mean any person taxable
205 under article thirteen, thirteen-a or twenty-three of this
206 chapter.

§11-13D-3. Amount of credit allowed for industrial expansion or revitalization, for eligible research and development projects, and for qualified housing development projects.

1 (a) *Credit allowed.*—There shall be allowed to eligible
2 taxpayers a credit against the taxes imposed by article
3 thirteen, thirteen-a or twenty-three of this chapter, for
4 industrial expansion or revitalization, and for eligible
5 research and development projects and for qualified
6 housing development projects. The amount of credit
7 shall be determined as hereinafter provided in this
8 section.

9 (b) *Qualified investment for industrial expansion; July*
10 *1, 1969 - March 31, 1978.*—For property purchased for
11 industrial expansion during the period beginning the
12 first day of July, one thousand nine hundred sixty-nine,
13 and ending the thirty-first day of March, one thousand
14 nine hundred seventy-eight, the amount of allowable

15 credit shall be equal to ten percent of the qualified
16 investment (as determined in section four) made for
17 industrial expansion, and shall reduce the business and
18 occupation tax liability of the industrial taxpayer under
19 article thirteen of this chapter, subject to the following
20 conditions and limitations:

21 (1) The amount of credit allowable shall be applied
22 over a ten-year period, at the rate of one-tenth thereof
23 per taxable year, beginning with the taxable year in
24 which the qualified investment is first placed in service
25 or use in this state.

26 (2) The amount of annual credit allowed shall not
27 reduce the business and occupation tax under article
28 thirteen of this chapter, below fifty percent of the
29 amount which would be imposed for such taxable year
30 in the absence of this credit against tax, computed
31 before application of the annual exemption allowed by
32 section three, article thirteen of this chapter.

33 (3) No carryover to a subsequent taxable year or
34 carryback to a prior taxable year shall be allowed for
35 the amount of any unused portion of any annual credit
36 allowance. Such unused credit shall be forfeited.

37 (c) *Qualified investment for industrial expansion;*
38 *April 1, 1978-February 28, 1985.*—For property pur-
39 chased for industrial expansion during the period
40 beginning the first day of March, one thousand nine
41 hundred seventy-eight, and ending the twenty-eighth
42 day of February, one thousand nine hundred eighty-five,
43 the amount of allowable credit shall be equal to ten
44 percent of the qualified investment (as determined in
45 section four) made for industrial expansion, and shall
46 reduce the business and occupation tax liability of the
47 industrial taxpayer under sections two-b, two-h and two-
48 m, article thirteen of this chapter, subject to the
49 following conditions and limitations:

50 (1) The amount of credit allowable shall be applied
51 over a ten-year period, at the rate of one tenth thereof
52 per taxable year, beginning with the taxable year in
53 which the qualified investment is first placed in service
54 or use in this state.

55 (2) The amount of annual credit allowed shall not
56 reduce the business and occupation taxes imposed by
57 section two, article thirteen of this chapter, under
58 sections two-b, two-h and two-m, article thirteen of this
59 chapter, below fifty percent of the amount which would
60 be imposed for such taxable year, in the absence of this
61 credit against tax, computed before application of the
62 annual exemption allowed by section three, article
63 thirteen of this chapter: *Provided*, That the tax under
64 section two-h of said article thirteen, shall not be
65 reduced by more than fifty percent of the tax
66 attributable to the privilege of manufacturing for
67 another, which privilege would be taxable under section
68 two-b of said article thirteen, if title to the raw materials
69 involved in the manufacturing process were vested in
70 the taxpayer exercising the privilege taxable under
71 section two-h of said article thirteen.

72 (3) No carryover to a subsequent taxable year or
73 carryback to a prior taxable year shall be allowed for
74 the amount of any unused portion of any annual credit
75 allowance. Such unused credit shall be forfeited.

76 (d) *Eligible investment for industrial revitalization;*
77 *July 1, 1981-February 28, 1985.*—For property pur-
78 chased for industrial revitalization during the period
79 beginning the first day of July, one thousand nine
80 hundred eighty-one, and ending the twenty-eighth day
81 of February, one thousand nine hundred eighty-five, the
82 amount of allowable credit shall be equal to ten percent
83 of the eligible investment (as determined under section
84 four) made for industrial revitalization, and shall reduce
85 the business and occupation tax under sections two-b
86 and two-h, article thirteen of this chapter, subject to the
87 following conditions and limitations:

88 (1) The allowable credit shall be applied over a ten-
89 year period at the rate of one tenth of the amount thereof
90 per taxable year, beginning with the taxable year in
91 which the eligible investment is first placed in service
92 or use in this state.

93 (2) The amount of annual credit allowed shall not
94 reduce the business and occupation taxes imposed by

95 section two, article thirteen of this chapter, under
96 sections two-b and two-h of said article, below fifty
97 percent of the amount which would be imposed for the
98 taxable year in the absence of this credit against tax,
99 computed before application of the annual exemption
100 allowed by section three, article thirteen of this chapter:
101 *Provided*, That the tax under section two-h of said
102 article thirteen, shall not be reduced by more than fifty
103 percent of the tax attributable to the privilege of
104 manufacturing for another, which privilege would be
105 taxable under section two-b of said article thirteen, if
106 title to the raw materials involved in the manufacturing
107 process were vested in the taxpayer exercising the
108 privilege taxable under section two-h of said article
109 thirteen.

110 (3) When in any taxable year the eligible industrial
111 taxpayer is entitled to claim credit under both this
112 subsection (d) and under subsection (b) or (c), or both,
113 of this section, the total amount of all credits allowed
114 under this section shall not exceed the fifty percent rule
115 outlined in subdivision (2) of this subsection (d).

116 (4) No carryover to a subsequent taxable year or
117 carryback to a prior taxable year shall be allowed for
118 the amount of any unused portion of any annual credit
119 allowance. Any unused credit shall be forfeited.

120 (5) No credit shall be allowed under this section for
121 any property purchased for industrial revitalization
122 prior to the first day of July, one thousand nine hundred
123 eighty-one.

124 (e) *Eligible investment for industrial expansion or*
125 *revitalization after February 28, 1985.*—For property
126 purchased for industrial expansion or industrial revital-
127 ization on or after the first day of March, one thousand
128 nine hundred eighty-five, the amount of allowable credit
129 shall be equal to ten percent of the eligible investment
130 (as determined in section four) made for industrial
131 expansion or industrial revitalization, and shall reduce
132 the business and occupation tax imposed under article
133 thirteen of this chapter subject to the following condi-
134 tions and limitations:

135 (1) The amount of credit allowable shall be applied
136 over a ten-year period, at the rate of one-tenth thereof
137 per taxable year, beginning with the taxable year in
138 which the eligible investment is first placed in service
139 or use in this state.

140 (2) The amount of annual credit allowed shall not
141 reduce the business and occupation taxes imposed by
142 article thirteen of this chapter, below fifty percent of the
143 amount which would be imposed for such taxable year
144 in the absence of this credit against tax, computed
145 before application of the annual exemption allowed by
146 section three, article thirteen of this chapter.

147 (3) When in any taxable year the industrial taxpayer
148 is entitled to claim credit under this subsection (e) and
149 under subsection (b), (c) or (d) of this section (or any
150 combinations thereof), the total amount of all credits
151 allowed under this section shall not exceed the fifty
152 percent rule outlined in subdivision (2) of this subsection
153 (e).

154 (4) No carryover to a subsequent taxable year or
155 carryback to a prior taxable year shall be allowed for
156 the amount of any unused portion of any annual credit
157 allowance. Such unused credit shall be forfeited.

158 (5) When in any taxable year the industrial taxpayer
159 is entitled to claim credit under this article and article
160 thirteen-e of this chapter, the total amount of all such
161 credits allowable for the taxable year shall not reduce
162 the amount of business and occupation taxes imposed by
163 article thirteen of this chapter, below fifty percent of the
164 amount which would be imposed for such taxable year,
165 computed before allowance of the annual exemption
166 allowed by section three, article thirteen of this chapter.

167 (6) No credit shall be allowed under this subsection
168 (e) for any property purchased on or after the first day
169 of March, one thousand nine hundred eighty-five, for
170 which credit is allowed under article thirteen-c of this
171 chapter.

172 (7) No credit shall be allowed under this subsection
173 (e) for any property purchased for industrial expansion

174 or industrial revitalization prior to the first day of
175 March, one thousand nine hundred eighty-five.

176 (f) *Eligible investment for research and development*
177 *project after June 30, 1985.*—For property and services
178 purchased for an eligible research and development
179 project on or after the first day of July, one thousand
180 nine hundred eighty-five, the amount of allowable credit
181 shall be equal to ten percent of the eligible investment
182 (as determined in section five) made for an eligible
183 research and development project, and shall reduce the
184 business and occupation taxes under sections two-a, two-
185 b, two-m, article thirteen of this chapter, subject to the
186 following conditions and limitations:

187 (1) The allowable credit shall be applied over a ten-
188 year period at the rate of one tenth of the amount thereof
189 per taxable year, beginning with the taxable year in
190 which the eligible investment is first placed in service
191 or use in this state, or is expensed for federal income
192 tax purposes.

193 (2) The amount of annual credit allowed shall not
194 reduce the business and occupation taxes imposed by
195 section two, article thirteen of this chapter, under
196 section two-a of said article, on the business of producing
197 natural resources; under section two-b of said article
198 thirteen, on the business of manufacturing, compound-
199 ing or preparing tangible personal property for sale;
200 under section two-h of said article thirteen on the
201 providing of a manufacturing service; and under section
202 two-m of said article thirteen, on the business of
203 generating electric power, below fifty percent of the
204 amount which would be imposed for the taxable year in
205 the absence of this credit against tax, computed before
206 application of the annual exemption allowed by section
207 three, article thirteen of this chapter.

208 (3) When in any taxable year the eligible taxpayer is
209 entitled to claim credit under both this subsection (f)
210 and subsection (b), (c), (d) or (e) of this section (or any
211 combinations thereof), the total amount of all credits
212 allowed under this section shall not exceed the fifty
213 percent rule outlined in subdivision (2) of this subsection

214 (f).

215 (4) No carryover to a subsequent tax year or carry-
216 back to a prior taxable year shall be allowed for the
217 amount of any unused portion of any annual credit
218 allowance. Any unused credit shall be forfeited.

219 (5) No credit shall be allowed under this subsection
220 (f) for any property purchased for an eligible research
221 and development project, when such property is used to
222 determine the eligible investment under section four of
223 this article, or determine the amount of credit allowable
224 under article thirteen-c of this chapter.

225 (6) No credit shall be allowed under this subsection
226 (f) for any property purchased for research and devel-
227 opment prior to the first day of July, one thousand nine
228 hundred eighty-five.

229 (g) *Eligible investment for qualified housing develop-*
230 *ment project after June 30, 1986.* — For property and
231 services purchased for a qualified housing development
232 project on or after the first day of July, one thousand
233 nine hundred eighty-six, the amount of allowable credit
234 shall be equal to ten percent of the eligible investment
235 (as determined in section five-a) made for a qualified
236 housing development project, and shall reduce the
237 business and occupation taxes under sections two-c and
238 two-e, article thirteen of this chapter, subject to the
239 following conditions and limitations:

240 (1) The allowable credit shall be applied over a ten-
241 year period at the rate of one tenth of the amount thereof
242 per taxable year, beginning with the taxable year in
243 which any combination of residential housing units (as
244 defined in section five-a of this article) available for
245 occupancy or occupied in the qualified housing
246 development project is five or more residential housing
247 units.

248 (2) The amount of annual credit allowed shall not
249 reduce the business and occupation taxes imposed by
250 section two, article thirteen of this chapter, under
251 section two-c of said article on the business of selling
252 tangible property and under section two-e on the

253 business of contracting below fifty percent of the
254 amount which would be imposed for the taxable year in
255 the absence of this credit against tax, computed before
256 application of the annual exemption allowed by section
257 three, article thirteen of this chapter.

258 (3) When in any taxable year the eligible taxpayer is
259 entitled to claim credit under both this subsection (g)
260 and subsection (b), (c), (d), (e) or (f) of this section (or
261 any combinations thereof), the total amount of all credits
262 allowed under this section shall not exceed the fifty
263 percent rule outlined in subdivision (2) of this subsection
264 (g).

265 (4) No carryover to a subsequent tax year or carry
266 back to a prior taxable year shall be allowed for the
267 amount of any unused portion of any annual credit
268 allowance. Any unused credit shall be forfeited.

269 (5) No credit shall be allowed under this subsection
270 (g) for any property purchased for an eligible housing
271 development project, when such property is used to
272 determine the eligible investment under section four of
273 this article, or determine the amount of credit allowable
274 under article thirteen-c of this chapter.

275 (6) No credit shall be allowed under this subsection
276 (g) for any property purchased for an eligible housing
277 development project, when such property is used to
278 determine the eligible investment under section four of
279 this article, or determine the amount of credit allowable
280 under article thirteen-c of this chapter.

281 (h) *Credit limitation.*—The aggregate amount of
282 credit allowable under this article and article thirteen-
283 e of this chapter, against the taxes imposed by article
284 thirteen of this chapter for the taxable year, shall in no
285 event exceed fifty percent of the tax due for the taxable
286 year, computed prior to application of the tax credits
287 provided by this article and articles thirteen-c and
288 thirteen-e of this chapter, and the annual exemption
289 allowed provided by section three, article thirteen of this
290 chapter.

291 (i) *Application of credit after June 30, 1987.* — On and

292 after the first day of July, one thousand nine hundred
 293 eighty-seven, the credits allowed under subsections (b),
 294 (c), (d), (e), (f) and (g) of this section shall be applied to
 295 and reduce the taxes imposed by articles thirteen,
 296 thirteen-a and twenty-three of this chapter: *Provided*,
 297 That this credit shall not reduce the sum of the net tax
 298 liability of the taxpayer under articles thirteen, thir-
 299 teen-a and twenty-three of this chapter, for the taxable
 300 year below fifty percent of the amount thereof, deter-
 301 mined before application of the credits allowed by this
 302 article and article thirteen-c or thirteen-e, or both, of
 303 this chapter.

§11-13D-5a. Eligible investment for qualified housing development project.

1 (a) *General.*—The eligible investment in a qualified
 2 housing development project shall be the sum of the
 3 applicable percentage of the cost of land and depreciable
 4 property purchased for the construction of a qualified
 5 housing development project, which is placed in service
 6 or use in this state during the taxable year.

7 (b) *Applicable percentage of property.*—For the
 8 purpose of subsection (a), the applicable percentage for
 9 land and depreciable property shall be determined
 10 under the following table:

11 If useful life is:	The applicable percentage is:
12 Less than 4 years.....	0
13 4 years or more but less than 6 years	33-1/3%
14 6 years or more but less than 8 years	66-2/3%
15 8 years or more	100%

16 The useful life of any property for purposes of this
 17 section shall be determined as of the date such property
 18 is first placed in service or use in this state by the
 19 taxpayer, determined in accordance with federal income
 20 tax law.

21 (c) *Cost of property.*—For purposes of subsection (a),
 22 the cost of each item of property purchased for the
 23 conduct of an eligible housing development project shall
 24 be determined under the following rules:

25 (1) *Trade-ins*.—Cost shall not include the value of
26 property given in trade or exchange for the property
27 purchased for construction of a qualified housing
28 development project.

29 (2) *Damaged, destroyed or stolen property*.—If prop-
30 erty is damaged or destroyed by fire, flood, storm or
31 other casualty, or is stolen, then the cost of replacement
32 property shall not include any insurance proceeds
33 received in compensation for the loss.

34 (3) *Self-constructed property*.—In the case of self-
35 constructed property, the cost thereof shall be the
36 amount properly charged to the capital account for
37 depreciation in accordance with federal income tax law.

38 (d) “Qualified housing development” or “qualified
39 housing development project” means a residential
40 housing development located in this state that contains
41 five or more single-family contiguous residential
42 housing units or multi-family residential buildings
43 containing five or more residential housing units, which
44 are contiguously located.

45 (e) “Residential housing unit” means any single-family
46 dwelling or a single-family unit in a multi-family
47 dwelling that is constructed for sale or lease to nontran-
48 sients for use and occupancy as their primary perman-
49 ent residence.

**§11-13D-6. Forfeiture of unused tax credits; redetermi-
nation of credit required.**

1 (a) *Disposition of property or cessation of use*.—If
2 during any taxable year, property with respect to which
3 a tax credit has been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section four, five or five-a of this
6 article; or

7 (2) Ceases to be used in the new or expanded or
8 revitalized industrial business, or in the eligible
9 research and development project, or in the qualified
10 housing development project, of the taxpayer in this
11 state prior to the end of its useful life, as determined

12 under said section four, five or five-a, then the unused
13 portion of the credit allowed for such property shall be
14 forfeited for the taxable year and all ensuing years.
15 Additionally, except when the property is damaged or
16 destroyed by fire, flood, storm or other casualty, or is
17 stolen, the taxpayer shall redetermine the amount of
18 credit allowed in all earlier years by reducing the
19 applicable percentage of cost of such property allowed
20 under said section three, to correspond with the
21 percentage of cost allowable for the period of time that
22 the property was actually used in this state in the
23 industrial business of the taxpayer. Taxpayer shall then
24 file a reconciliation statement with its annual business
25 and occupation tax return for the year in which the
26 forfeiture occurs and pay any additional business and
27 occupation taxes owed due to reduction of the amount
28 of credit allowable for such earlier years, plus interest
29 and any applicable penalties: *Provided*, That on and
30 after the first day of July, one thousand nine hundred
31 eighty-seven, the phrase "taxes imposed by article
32 twelve-a or thirteen (or both) of this chapter" shall mean
33 "taxes imposed by articles thirteen, thirteen-a and
34 twenty-three of this chapter (or any one or combination
35 of such articles of this chapter)."

36 (b) *Cessation of operation of industrial facility or*
37 *eligible research and development project or qualified*
38 *housing development project.*—If during any taxable
39 year, the taxpayer ceases operation of an industrial
40 facility in this state, or of an eligible research and
41 development project, or a qualified housing development
42 project, for which credit was allowed under this article,
43 or article thirteen-c of this chapter prior to its repeal,
44 before expiration of the useful life of the property with
45 respect to which tax credit has been allowed under this
46 article or article thirteen-c of this chapter prior to its
47 repeal, then the unused portion of the allowed credit
48 shall be forfeited for the taxable year and all ensuing
49 years. Additionally, except when the cessation is due to
50 fire, flood, storm or other casualty, the taxpayer shall
51 redetermine the amount of credit allowed in earlier
52 years by reducing the applicable percentage of cost of
53 such property allowed under section three, to correspond

54 with the percentage of cost allowable for the period of
55 time that the property was actually used in this state
56 in the industrial business of the taxpayer. Taxpayer
57 shall then file a reconciliation statement with its annual
58 business and occupation tax return for the year in which
59 the forfeiture occurs and pay any additional business
60 and occupation taxes owed due to reduction of the
61 amount of credit allowable for such earlier years, plus
62 interest and any applicable penalties: *Provided*, That on
63 and after the first day of July, one thousand nine
64 hundred eighty-seven, the phrase "taxes imposed by
65 article twelve-a or thirteen (or both) of this chapter"
66 shall mean "taxes imposed by articles thirteen, thirteen-
67 a and twenty-three of this chapter (or any one or
68 combination of such articles of this chapter)."

CHAPTER 160

(H. B. 2173—By Delegate Stemple and Delegate Farley)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the gasoline and special fuel excise tax; authorizing refund of tax because of certain nonhighway uses; and providing statute of limitations and effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-11. Refund of tax because of certain nonhighway uses; statute of limitations and effective date.

1 (a) The tax imposed by this article shall be refunded
2 to any person who shall buy in quantities of twenty-five
3 gallons or more, at any one time, tax-paid gasoline or
4 special fuel, when consumed for the following purposes:

5 (1) As a special fuel for internal combustion engines
6 not operated upon highways of this state; or

7 (2) Gasoline consumed to operate tractors and gas
8 engines or threshing machines for agricultural pur-
9 poses, when such operation is not, in whole or in part,
10 upon the highways of this state; or

11 (3) Gasoline used by any railway company, subject to
12 regulation by the public service commission of West
13 Virginia, for any purpose other than upon the highways
14 of this state; or

15 (4) Gasoline consumed in the business of manufactur-
16 ing or producing natural resources or in mining or
17 drilling therefor, or in the transportation of natural
18 resources solely by means of unlicensed vehicles or
19 vehicles licensed under the motor vehicle laws of this
20 state, either as a motor fuel or for any other purpose and
21 which gasoline is not in any part used upon the
22 highways of this state; or

23 (5) Gasoline consumed in motorboats or other water-
24 craft operated upon the navigable waters of this state;
25 or

26 (6) Gasoline or special fuel used to power a power
27 take-off unit on a motor vehicle. When a motor vehicle
28 with auxiliary equipment uses fuel and there is no
29 auxiliary motor for such equipment or separate tank for
30 such a motor, the person claiming the refund may
31 present to the tax commissioner a statement of his claim
32 and shall be allowed a refund for fuel used in operating
33 a power take-off unit on a cement mixer truck or
34 garbage truck equal to twenty-five percent of the tax
35 imposed by this article paid on all fuel used in such a
36 truck.

37 (b) Such tax shall be refunded upon presentation to

38 the commissioner of an affidavit accompanied by the
39 original or top copy sales slips or invoices, or certified
40 copies thereof, from the distributor or producer or retail
41 dealer, showing such purchases, together with evidence
42 of payment thereof, which affidavit shall set forth the
43 total amount of such gasoline or special fuel purchased
44 and consumed by such user, other than upon any
45 highways of this state, and how used; and the tax
46 commissioner upon the receipt of such affidavit and
47 such paid sales slips or invoices shall cause to be
48 refunded such tax paid on gasoline or special fuel
49 purchased and consumed as aforesaid.

50 (c) The right to receive any refund under the provi-
51 sions of this section shall not be assignable and any
52 assignment thereof shall be void and of no effect, nor
53 shall any payment be made to any person other than the
54 original person entitled thereto using gasoline or special
55 fuel as hereinbefore in this section set forth. The tax
56 commissioner shall cause a refund to be made under the
57 authority of this section only when the claim for such
58 refund is filed with the tax commissioner, upon forms
59 prescribed by the tax commissioner, within six months
60 from the month of purchase or delivery of the gasoline
61 or special fuel, except that any application for refund
62 made under authority of subdivision (2) above shall be
63 filed within twelve months from the month of purchase
64 or delivery of such gasoline or special fuel. Any claim
65 for a refund not timely filed shall not be construed to
66 be or constitute a moral obligation of the state of West
67 Virginia for payment. Such claim for refund shall also
68 be subject to the provisions of section fourteen, article
69 ten of this chapter.

70 (d) *Effective date.* — The provisions of this section as
71 hereby amended shall apply to all gasoline and special
72 fuels purchased or delivered on or after the first day of
73 July, one thousand nine hundred eighty-six, and the
74 provisions of this section in effect prior to the said first
75 day of July, shall apply to gasoline and special fuels
76 purchased or delivered prior to the first day of July, one
77 thousand nine hundred eighty-six.

CHAPTER 161

(H. B. 2009—By Mr. Speaker, Mr. Albright, and Delegate Swann,
by request of the Executive)

[Passed March 3, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article twenty-four of said chapter eleven; and to further amend said article twenty-four by adding thereto a new section, designated section three-a, all relating to definitions of terms used in the West Virginia personal income and corporation net income tax acts; updating the meaning of certain terms used to conform with their meaning for federal income tax purposes as of the thirty-first day of December, one thousand nine hundred eighty-five; and making such updating retroactive to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-four.

Be it enacted by the Legislature of West Virginia:

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

Article.

- 21. Personal Income Tax.
- 24. Corporation Net Income Tax.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

- 1 Any term used in this article shall have the same
- 2 meaning as when used in a comparable context in the
- 3 laws of the United States relating to income taxes,
- 4 unless a different meaning is clearly required. Any
- 5 reference in this article to the laws of the United States

6 shall mean the provisions of the Internal Revenue Code
7 of 1954, as amended, and such other provisions of the
8 laws of the United States as relate to the determination
9 of income for federal income tax purposes. All amend-
10 ments made to the laws of the United States prior to
11 the first day of January, one thousand nine hundred
12 eighty-six, shall be given effect in determining the taxes
13 imposed by this article for the tax period beginning the
14 first day of January, one thousand nine hundred eighty-
15 five, and thereafter, but no amendment to the laws of
16 the United States made on or after the first day of
17 January, one thousand nine hundred eighty-six, shall be
18 given effect.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

§11-24-3a. Specific terms defined.

§11-24-3. Meaning of terms; general rule.

1 Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to federal income
4 taxes, unless a different meaning is clearly required by
5 the context or by definition in this article. Any reference
6 in this article to the laws of the United States or to the
7 Internal Revenue Code or to the federal income tax law
8 shall mean the provisions of the laws of the United
9 States related to the determination of income for federal
10 income tax purposes. All amendments made to the laws
11 of the United States prior to the first day of January,
12 one thousand nine hundred eighty-six, shall be given
13 effect in determining the taxes imposed by this article
14 for the tax period beginning the first day of January,
15 one thousand nine hundred eighty-five, and thereafter,
16 but no amendment to laws of the United States made
17 on or after the first day of January, one thousand nine
18 hundred eighty-six, shall be given effect.

§11-24-3a. Specific terms defined.

1 For purposes of this article:

2 (1) *Business income*.—The term “business income”
3 means income arising from transactions and activity in

4 the regular course of the taxpayer's trade or business
5 and includes income from tangible and intangible
6 property if the acquisition, management and disposition
7 of the property constitute integral parts of the taxpay-
8 er's regular trade or business operations.

9 (2) *Commercial domicile*.—The term “commercial
10 domicile” means the principal place from which the
11 trade or business of the taxpayer is directed or
12 managed.

13 (3) *Compensation*.—The term “compensation” means
14 wages, salaries, commissions and any other form of
15 remuneration paid to employees for personal services.

16 (4) *Corporation*.—The term “corporation” includes a
17 joint-stock company and any association or other
18 organization which is taxable as a corporation under the
19 federal income tax law.

20 (5) *Delegate*.—The term “delegate” in the phrase “or
21 his delegate,” when used in reference to the tax
22 commissioner, means any officer or employee of the
23 state tax department duly authorized by the tax
24 commissioner directly, or indirectly, by one or more
25 redelegations of authority, to perform the functions
26 mentioned or described in this article or regulation
27 promulgated thereunder.

28 (6) *Domestic corporation*.—The term “domestic corpo-
29 ration” means any corporation organized under the laws
30 of West Virginia and certain corporations organized
31 under the laws of the state of Virginia before the
32 twentieth day of June, one thousand eight hundred
33 sixty-three. Every other corporation is a foreign
34 corporation.

35 (7) *Engaging in business*.—The term “engaging in
36 business” or “doing business” means any activity of a
37 corporation which enjoys the benefits and protection of
38 government and laws in this state.

39 (8) *Federal Form 1120*.—The term “Federal Form
40 1120” means the annual federal income tax return of
41 any corporation made pursuant to Section 6012, 6037,
42 6038, 6046, or other applicable section of the United

43 States Internal Revenue Code of 1954, as amended or
44 renumbered, or in successor provisions of the laws of the
45 United States, in respect to the taxable income of a
46 corporation, and filed with the Federal Internal
47 Revenue Service. In the case of a corporation that is
48 exempt from federal income taxes but which has
49 taxable unrelated business income, it means Federal
50 Form 990T. In the case of a corporation that elects to
51 file a federal income tax return as part of an affiliated
52 group, but files as a separate corporation under this
53 article, then as to such corporation Federal Form 1120
54 means its pro forma Federal Form 1120.

55 (9) *Fiduciary*.—The term “fiduciary” means, and
56 includes, a guardian, trustee, executor, administrator,
57 receiver, conservator or any person acting in any
58 fiduciary capacity for any person.

59 (10) *Fiscal year*.—The term “fiscal year” means an
60 accounting period of twelve months ending on any day
61 other than the last day of December, and on the basis
62 of which the taxpayer is required to report for federal
63 income tax purposes.

64 (11) *Includes and including*.—The terms “includes” and
65 “including” when used in a definition contained in this
66 article shall not be deemed to exclude other things
67 otherwise within the meaning of the term being defined.

68 (12) *Nonbusiness income*.—The term “nonbusiness
69 income” means all income other than business income.

70 (13) *Person*.—The term “person” is to be deemed
71 interchangeable with the term “corporation” in this
72 section.

73 (14) *Pro forma return*.—The term “pro forma return”
74 when used in this article means the return which the
75 taxpayer would have filed with the Internal Revenue
76 Service had it not elected to file federally as part of an
77 affiliated group.

78 (15) *Public utility*.—The term “public utility” means
79 any business activity to which the jurisdiction of the
80 public service commission of West Virginia extends
81 under section one, article two, chapter twenty-four of the

82 code of West Virginia.

83 (16) *Sales*.—The term “sales” means all gross receipts
84 of the taxpayer that are “business income,” as defined
85 in this section.

86 (17) *State*.—The term “state” means any state of the
87 United States, the District of Columbia, the Common-
88 wealth of Puerto Rico, any territory or possession of the
89 United States, and any foreign country or political
90 subdivision thereof.

91 (18) *Taxable year*.—The term “taxable year” means
92 the taxable year for which the taxable income of the
93 taxpayer is computed under the federal income tax law.

94 (19) *Tax*.—The term “tax” includes, within its mean-
95 ing, interest and additions to tax, unless the intention
96 to give it a more limited meaning is disclosed by the
97 context.

98 (20) *Tax commissioner*.—The term “tax commis-
99 sioner” means the tax commissioner of the state of West
100 Virginia or his delegate.

101 (21) *Taxpayer*.—The term “taxpayer” means a corpo-
102 ration subject to the tax imposed by this article.

103 (22) *This code*.—The term “this code” means the code
104 of West Virginia, one thousand nine hundred thirty-one,
105 as amended.

106 (23) *This state*.—The term “this state” means the state
107 of West Virginia.

108 (24) *West Virginia taxable income*.—The term “West
109 Virginia taxable income” means the taxable income of
110 a corporation as defined by the laws of the United States
111 for federal income tax purposes, adjusted, as provided
112 in section six of this article: *Provided*, That in the case
113 of a corporation having income from business activity
114 which is taxable without this state, its “West Virginia
115 taxable income” shall be such portion of its taxable
116 income as so defined and adjusted as is allocated or
117 apportioned to this state under the provisions of section
118 seven of this article.

CHAPTER 162

(S. B. 257—By Senator Cook)

[Passed February 13, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four and five, article eight, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring corporations, associations and limited partnerships to file a certificate of registration of true name with the secretary of state in order to do business as some name other than the name set forth in the certificate of incorporation, authority, association or limited partnership; requiring those business entities to file a copy of the certificate with the county clerk where the entities' principal office is located if a domestic corporation, or where its principal business is transacted if a foreign corporation; providing that failure to comply with section two or four of this article is a misdemeanor and providing penalty therefor; setting forth procedures to be followed; and requiring the secretary of state to keep an index of persons filing certificates of true name.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. TRADE NAMES.

- §47-8-2. Business not to be conducted under assumed name without filing certificate of true name.
- §47-8-3. Indexing of certificates filed with clerk of county commission.
- §47-8-4. Corporations, associations and limited partnerships not to conduct business under assumed name without filing certificate of true name; filing, recordation and indexing of certificates filed; issuance of certificate of true name.
- §47-8-5. Penalties for violation of §47-8-2.

§47-8-2. Business not to be conducted under assumed name without filing certificate of true name.

- 1 No individual, sole proprietorship or general partner-
- 2 ship may carry on, conduct or transact any business in

3 this state under any assumed name, or under any desig-
4 nation, name or style, corporate or otherwise, other than
5 the real name or names of the individual or individuals
6 owning, conducting or transacting such business, unless
7 that person or persons shall file in the office of the clerk
8 of the county commission of the county in which such
9 person or persons maintains his principal place of business,
10 a certificate setting forth the name under which such
11 business is, or is to be, conducted or transacted, and the
12 true or real full name or names of the person or persons
13 owning, conducting or transacting the same, with the
14 home and post-office address or addresses of such person
15 or persons. Such certificate shall be executed and duly
16 acknowledged by the person or persons so owning, con-
17 ducting or intending to conduct such business: *Provided*,
18 That the selling of goods by sample or through traveling
19 agents or traveling salesmen, or by means of orders for-
20 warding by the purchaser through the mails, may not be
21 construed for purposes of this article as conducting or
22 transacting business so as to require the filing of such
23 certificates.

§47-8-3. Indexing of certificates filed with clerk of county commission.

1 The clerks of county commissions of this state shall keep
2 an alphabetical index of all persons filing certificates
3 provided for in this article.

§47-8-4. Corporations, associations and limited partnerships not to conduct business under assumed name without filing certificate of true name; filing, recordation and indexing of certificates filed; issuance of certificate of true name.

1 (a) No corporation, limited partnership or association
2 required to register with the secretary of state in order to
3 conduct business within the state may conduct or trans-
4 act any business in this state under any assumed name,
5 or under any designation, name or style, corporate or
6 otherwise, other than the name established by the certifi-
7 cate of incorporation, authority, association or limited
8 partnership, unless the corporation, limited partnership

9 or association files in the office of the secretary of state a
10 certificate of registration of true name setting forth the
11 name or names under which such business is, or is to be,
12 conducted or transacted, with the address of the principal
13 office within the state or, if no office is maintained within
14 the state, the address of the principal office in the state in
15 which the corporation, association or limited partnership
16 is established.

17 (b) Two executed originals of the application for true
18 name registration, shall be delivered to the secretary of
19 state. If the filing officer finds that the application for true
20 name registration conforms to law, he or she shall, when
21 all fees have been paid as prescribed by law, (i) endorse
22 on each of the originals the word "filed" and the month,
23 day and year of the filing; (ii) file one of the originals;
24 and (iii) issue to the applicant the certificate of registra-
25 tion of true name with the other original attached.

26 (c) A domestic corporation, limited partnership or
27 association having its principal office within the state shall
28 file a certified copy of the certificate of true name with
29 the clerk of the county commission of the county in which
30 the principal office is located. A foreign corporation, limit-
31 ed partnership or association having its principal office
32 outside the state shall file a certified copy of the certificate
33 with the clerk of the county commission of a county in
34 which its principal business is transacted.

35 (d) The secretary of state shall keep an alphabetical
36 index of all persons filing certificates provided for in this
37 section.

§47-8-5. Penalties for violation of §47-8-2.

1 Any individual, sole proprietorship, general partner-
2 ship, corporation, limited partnership or association or
3 other person owning, carrying on, conducting or trans-
4 acting business as aforesaid who willfully fails to comply
5 with the provisions of section two or four of this article
6 shall be guilty of a misdemeanor, and, upon conviction
7 thereof, shall be fined not less than twenty-five nor more
8 than one hundred dollars, or imprisoned in the county
9 jail for a term not exceeding thirty days or both fined and
10 imprisoned.

CHAPTER 163

(Com. Sub. for S. B. 62—By Senator Palumbo)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-four, relating to the placing of trash and garbage collection containers on state road rights-of-way by counties and municipalities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-54. Location of trash and garbage collection containers by counties and municipalities.

- 1 (a) The commissioner of the department of highways
- 2 is authorized to issue permits to counties and municipali-
- 3 ties for the location of containers on rights-of-way of
- 4 state maintained roads and highways for the collection
- 5 of trash and garbage: *Provided*, That by the issuance of
- 6 these permits, counties and municipalities will not be in
- 7 direct competition with private common carriers. Private
- 8 common carriers are carriers that are regulated by the
- 9 public service commission. Such containers may be located
- 10 on road and highway rights-of-way only when authorized
- 11 in writing by the commissioner or his agent in accord-
- 12 ance with rules promulgated by the commissioner in
- 13 accordance with chapter twenty-nine-a of this code. Such
- 14 rules shall take into consideration the safety of travelers
- 15 on the roads and highways of this state and the elimina-
- 16 tion of unsightly conditions and health hazards. Such
- 17 containers may not be located on controlled-access or
- 18 interstate highways.
- 19 (b) The written authority given by the commissioner

20 is no guarantee that the state is the owner of the land
21 upon which a container is to be located and if any ques-
22 tion exists concerning ownership of such land, the issu-
23 ance of such written authority may not be granted until
24 the county or municipality certifies that written permis-
25 sion to locate the container has been obtained from any
26 person claiming an interest in the land if such person's
27 whereabouts can be determined.

28 (c) Whenever any county or municipality fails to
29 comply with the rules promulgated by the commissioner
30 or of any order of the commissioner for the removal or
31 relocation of a container, the permit for such container
32 shall be revoked and, if not removed by the county or
33 municipality, the commissioner may remove such con-
34 tainer and charge the expense of removal to the county
35 or municipality failing to comply with the rules or order
36 of the commissioner.

CHAPTER 164

(S. B. 102—By Senators Sharpe, Cook, Palumbo,
Colombo, Fanning, Burdette and Shaw)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform common interest ownership act; short title; applicability; definitions; variation by agreement; separate titles and taxation; applicability of local ordinances, regulations and building codes; eminent domain; supplemental general principles of law applicable; construction against implicit repeal; uniformity of application and construction; severability; unconscionable agreement or term of contract; obligation of good faith; remedies to be liberally administered; creation of common interest communities; adjustment of dollar amounts; applicability to new and preexisting developments; unit boundaries; construction and validity of declaration and bylaws; description of units; contents of declaration; leasehold common interest communities; allocation of common element interests, votes and common

expense liabilities; limited common elements; plats and plans; exercise of development rights; alterations of units; relocation of boundaries between adjoining units; subdivision or conversion of units; monuments as boundaries; use of common interest for sales; easement rights; amendment of declaration; termination of common interest communities; rights of secured lenders; master associations; merger or consolidation of common interest communities; addition of real estate; organization of unit owners' association; powers of unit owners' association; executive board members and officers; transfer of special declarant rights; termination of contracts and leases of declarant; bylaws; upkeep of the community; meetings; quorums; voting; proxies; tort and contract liability; conveyance or encumbrance of common elements; insurance; surplus funds; assessments for common expenses; lien for assessments; other liens affecting community; association records; association as trustee; applicability; waiver; liability for public offering statement requirements; public offering statement for common interest community subject to development rights; time shares; conversion buildings; securities; purchaser's right to cancel; resales of units; escrow of deposits; release of liens; conversion buildings; warranties; statute of limitations; effect of violation on rights of action; attorney's fees; labeling of promotional material; declarants's obligation to complete and restore; and substantial completion of units.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 36B. UNIFORM COMMON INTEREST OWNERSHIP ACT.

Article.

- 1. General Provisions.**
- 2. Creation, Alteration and Termination of Common Interest Communities.**
- 3. Management of the Common Interest Community.**
- 4. Protection of Purchasers.**

ARTICLE 1. GENERAL PROVISIONS.

PART I. DEFINITIONS AND OTHER GENERAL PROVISIONS.

- §36B-1-101. Short title.
- §36B-1-102. Applicability.
- §36B-1-103. Definitions.
- §36B-1-104. Variation by agreement.
- §36B-1-105. Separate titles and taxation.
- §36B-1-106. Applicability of local ordinances, regulations and building codes.
- §36B-1-107. Eminent domain.
- §36B-1-108. Supplemental general principles of law applicable.
- §36B-1-109. Construction against implicit repeal.
- §36B-1-110. Uniformity of application and construction.
- §36B-1-111. Unconscionable agreement or term of contract.
- §36B-1-112. Obligation of good faith.
- §36B-1-113. Remedies to be liberally administered.
- §36B-1-114. Adjustment of dollar amounts.

PART II. APPLICABILITY.

- §36B-1-201. Applicability to new common interest communities.
- §36B-1-202. Same—Exception for small cooperatives.
- §36B-1-203. Same—Exception for small and limited expenses liability planned communities.
- §36B-1-204. Applicability to preexisting common interest communities.
- §36B-1-205. Same—Exception for small preexisting co-operatives and planned communities.
- §36B-1-206. Same—Amendments to governing instruments.
- §36B-1-207. Applicability to nonresidential planned communities.

PART I. DEFINITIONS AND OTHER GENERAL PROVISIONS.

§36B-1-101. Short title.

- 1 This chapter may be cited as the “Uniform Common
- 2 Interest Ownership Act.”

§36B-1-102. Applicability.

- 1 Applicability of this chapter is governed by Part II of this
- 2 article.

§36B-1-103. Definitions.

- 1 In the declaration and bylaws (section 3-106), unless
- 2 specifically provided otherwise or the context otherwise
- 3 requires, and in this chapter:
 - 4 (1) “Affiliate of a declarant” means any person who
 - 5 controls, is controlled by, or is under common control with a
 - 6 declarant. A person “controls” a declarant if the person (i) is
 - 7 a general partner, officer, director, or employer of the

8 declarant, (ii) directly or indirectly or acting in concert with
9 one or more other persons, or through one or more
10 subsidiaries, owns, controls, holds with power to vote, or
11 holds proxies representing, more than 20 percent of the
12 voting interest in the declarant, (iii) controls in any manner
13 the election of a majority of the directors of the declarant, or
14 (iv) has contributed more than 20 percent of the capital of
15 the declarant. A person "is controlled by" a declarant if the
16 declarant (i) is a general partner, officer, director, or
17 employer of the person, (ii) directly or indirectly or acting in
18 concert with one or more other persons, or through one or
19 more subsidiaries, owns, controls, holds with power to vote,
20 or holds proxies representing, more than 20 percent of the
21 voting interest in the person, (iii) controls in any manner the
22 election of a majority of the directors of the person, or (iv)
23 has contributed more than 20 percent of the capital of the
24 person. Control does not exist if the powers described in this
25 paragraph are held solely as security for an obligation and
26 are not exercised.

27 (2) "Allocated interests" means the following interests
28 allocated to each unit: (i) In a condominium, the undivided
29 interest in the common elements, the common expense
30 liability, and votes in the association; (ii) in a cooperative,
31 the common expense liability and the ownership interest
32 and votes in the association; and (iii) in a planned
33 community, the common expense liability and votes in the
34 association.

35 (3) "Association" or "unit owners' association" means
36 the unit owners' association organized under section 3-101
37 of this chapter.

38 (4) "Common elements" means (i) in a condominium or
39 cooperative, all portions of the common interest community
40 other than the units; and (ii) in a planned community, any
41 real estate within a planned community owned or leased by
42 the association, other than a unit.

43 (5) "Common expenses" means expenditures made by,
44 or financial liabilities of, the association, together with any
45 allocations to reserves.

46 (6) "Common expense liability" means the liability for
47 common expenses allocated to each unit pursuant to section
48 2-107 of this chapter.

49 (7) "Common interest community" means real estate
50 with respect to which a person, by virtue of his ownership of
51 a unit, is obligated to pay for real estate taxes, insurance
52 premiums, maintenance, or improvement of other real
53 estate described in a declaration. "Ownership of a unit"
54 does not include holding a leasehold interest of less than
55 twenty years in a unit, including renewal options.

56 (8) "Condominium" means a common interest
57 community in which portions of the real estate are
58 designated for separate ownership and the remainder of the
59 real estate is designated for common ownership solely by
60 the owners of those portions. A common interest
61 community is not a condominium unless the undivided
62 interest in the common elements are vested in the unit
63 owners.

64 (9) "Conversion building" means a building that at any
65 time before creation of the common interest community was
66 occupied wholly or partially by persons other than
67 purchasers and persons who occupy with the consent of
68 purchasers.

69 (10) "Cooperative" means a common interest
70 community in which the real estate is owned by an
71 association, each of whose members is entitled by virtue of
72 his ownership interest in the association to exclusive
73 possession of a unit.

74 (11) "Dealer" means a person in the business of selling
75 units for his own account.

76 (12) "Declarant" means any person or group of persons
77 acting in concert who (i) as part of a common promotional
78 plan, offers to dispose of his or its interest in a unit not
79 previously disposed of or (ii) reserves or succeeds to any
80 special declarant right.

81 (13) "Declaration" means any instruments, however
82 denominated, that create a common interest community,
83 including any amendments to those instruments.

84 (14) "Development rights" means any right or
85 combination of rights reserved by a declarant in the
86 declaration to (i) add real estate to a common interest
87 community; (ii) create units, common elements, or limited

88 common elements within a common interest community;
89 (iii) subdivide units or convert units into common elements;
90 or (iv) withdraw real estate from a common interest
91 community.

92 (15) "Dispose" or "disposition" means a voluntary
93 transfer to a purchaser of any legal or equitable interest in a
94 unit, but the term does not include the transfer or release of
95 a security interest.

96 (16) "Executive board" means the body, regardless of
97 name, designated in the declaration to act on behalf of the
98 association.

99 (17) "Identifying number" means a symbol or address
100 that identifies only one unit in a common interest
101 community.

102 (18) "Leasehold common interest community" means a
103 common interest community in which all or a portion of the
104 real estate is subject to a lease, the expiration or
105 termination of which will terminate the common interest
106 community or reduce its size.

107 (19) "Limited common element" means a portion of the
108 common elements allocated by the declaration or by
109 operation of section 2-102 (2) or (4) for the exclusive use of
110 one or more but fewer than all of the units.

111 (20) "Master association" means an organization
112 described in section 2-120, whether or not it is also an
113 association described in section 3-101.

114 (21) "Offering" means any advertisement, inducement,
115 solicitation, or attempt to encourage any person to acquire
116 any interest in a unit, other than as security for an
117 obligation. An advertisement in a newspaper or other
118 periodical of general circulation, or in any broadcast
119 medium to the general public, of a common interest
120 community not located in this state, is not an offering if the
121 advertisement states that an offering may be made only in
122 compliance with the law of the jurisdiction in which the
123 common interest community is located.

124 (22) "Person" means an individual, corporation,
125 business trust, estate, trust, partnership, association, joint
126 venture, government, governmental subdivision or agency,
127 or other legal or commercial entity. In the case of a trust, the
128 corpus of which is real estate, however, "person" means the
129 beneficiary of the trust rather than the trust or the trustee.

130 (23) "Planned community" means a common interest
131 community that is not a condominium or a cooperative. A
132 condominium or cooperative may be part of a planned
133 community.

134 (24) "Proprietary lease" means an agreement with the
135 association pursuant to which a member is entitled to
136 exclusive possession of a unit in a cooperative.

137 (25) "Purchaser" means a person, other than a declarant
138 or a dealer, who by means of a voluntary transfer acquires a
139 legal or equitable interest in a unit other than (i) a leasehold
140 interest (including renewal options) of less than twenty
141 years, or (ii) as security for an obligation.

142 (26) "Real estate" means any leasehold or other estate or
143 interest in, over, or under land, including structures,
144 fixtures, and other improvements and interest that by
145 custom, usage, or law pass with a conveyance of land
146 though not described in the contract of sale or instrument of
147 conveyance. "Real estate" includes parcels with or without
148 upper or lower boundaries, and spaces that may be filled
149 with air or water.

150 (27) "Residential purposes" means use for dwelling or
151 recreational purposes, or both.

152 (28) "Security interest" means an interest in real estate
153 or personal property, created by contract or conveyance,
154 which secures payment or performance of an obligation.
155 The term includes a lien created by a mortgage, deed of
156 trust, trust deed, security deed, contract for deed, land sales
157 contract, lease intended as security, assignment of lease or
158 rents intended as security, pledge of an ownership interest
159 in an association, and any other consensual lien or title
160 retention contract intended as security for an obligation.

161 (29) "Special declarant rights" means rights reserved
162 for the benefit of a declarant to (i) complete improvements
163 indicated on plats and plans filed with the declaration
164 (section 2-109) or, in a cooperative, to complete
165 improvements described in the public offering statement
166 pursuant to section 4-103(a)(2); (ii) exercise any
167 development right (section 2-110); (iii) maintain sales
168 offices, management offices, signs advertising the common
169 interest community, and models (section 2-115); (iv) use
170 easements through the common elements for the purpose of
171 making improvements within the common interest
172 community or within real estate which may be added to the

173 common interest community (section 2-116); (v) make the
174 common interest community subject to a master association
175 (section 2-120); (vi) merge or consolidate a common interest
176 community with another common interest community of
177 the same form of ownership (section 2-121); or (vii) appoint
178 or remove any officer of the association or any master
179 association or any executive board member during any
180 period of declarant control (section 3-103(d)).

181 (30) "Time share" means a right to occupy a unit or any
182 of several units during (5) or more separated time periods
183 over a period of at least (5) years, including renewal options,
184 whether or not coupled with an estate or interest in a
185 common interest community or a specified portion thereof.

186 (31) "Unit" means a physical portion of the common
187 interest community designated for separate ownership or
188 occupancy, the boundaries of which are described pursuant
189 to section 2-105(a)(5). If a unit in a cooperative is owned by a
190 unit owner or is sold, conveyed, voluntarily or involuntarily
191 encumbered, or otherwise transferred by a unit owner, the
192 interest in that unit which is owned, sold, conveyed,
193 encumbered, or otherwise transferred is the right to
194 possession of that unit under a proprietary lease, coupled
195 with the allocated interests of that unit, and the
196 association's interest in that unit is not thereby affected.

197 (32) "Unit owner" means a declarant or other person
198 who owns a unit, or a lessee of a unit in a leasehold common
199 interest community whose lease expires simultaneously
200 with any lease, the expiration or termination of which will
201 remove the unit from the common interest community, but
202 does not include a person having an interest in a unit solely
203 as security for an obligation. In a condominium or planned
204 community, the declarant is the owner of any unit created
205 by the declaration. In a cooperative, the declarant is treated
206 as the owner of any unit to which allocated interests have
207 been allocated (section 2-107) until that unit has been
208 conveyed to another person.

§36B-1-104. Variation by agreement.

1 Except as expressly provided in this chapter, provisions
2 herein may not be varied by agreement, and rights
3 conferred may not be waived. A declarant may not act
4 under a power of attorney, or use any other device, to evade

5 the limitations or prohibitions of this chapter or the
6 declaration.

§36B-1-105. Separate titles and taxation.

1 (a) In a cooperative, unless the declaration provides that
2 a unit owner's interest in a unit and its allocated interests is
3 real estate for all purposes, that interest is personal
4 property. (That interest is subject to the provisions of all
5 homestead exemptions from taxation provided by law, even
6 if it is personal property.)

7 (b) In a condominium or planned community:

8 (1) If there is any unit owner other than a declarant,
9 each unit that has been created, together with its interest in
10 the common elements, constitutes for all purposes a
11 separate parcel of real estate.

12 (2) If there is any unit owner other than a declarant,
13 each unit must be separately taxed and assessed, and no
14 separate tax or assessment may be rendered against any
15 common elements for which a declarant has reserved no
16 development rights.

17 (c) Any portion of the common elements for which the
18 declarant has reserved any development right must be
19 separately taxed and assessed against the declarant, and
20 the declarant alone is liable for payment of those taxes.

21 (d) If there is no unit owner other than a declarant, the
22 real estate comprising the common interest community may
23 be taxed and assessed in any manner provided by law.

**§36B-1-106. Applicability of local ordinances, regulations and
building codes.**

1 (a) A building code may not impose any requirement
2 upon any structure in a common interest community which
3 it would not impose upon a physically identical
4 development under a different form of ownership.

5 (b) In condominiums and cooperatives, no zoning,
6 subdivision, or other real estate use law, ordinance, or
7 regulation may prohibit the condominium or cooperative
8 form of ownership or impose any requirement upon a
9 condominium or cooperative which it would not impose
10 upon a physically identical development under a different
11 form of ownership.

12 (c) Except as provided in subsections (a) and (b) of this

13 section, the provisions of this chapter do not invalidate or
14 modify any provision of any building code, zoning,
15 subdivision, or other real estate use law, ordinance, rule, or
16 regulation governing the use of real estate.

§36B-1-107. Eminent domain.

1 (a) If a unit is acquired by eminent domain, or part of a
2 unit is acquired by eminent domain, leaving the unit owner
3 with a remnant that may not practically or lawfully be used
4 for any purpose permitted by the declaration, the award
5 must include compensation to the unit owner for that unit
6 and its allocated interests, whether or not any common
7 elements are acquired. Upon acquisition, unless the decree
8 otherwise provides, that unit's allocated interests are
9 automatically reallocated to the remaining units in
10 proportion to the respective allocated interests of those
11 units before the taking, and the association shall promptly
12 prepare, execute and record an amendment to the
13 declaration reflecting the reallocations. Any remnant of a
14 unit remaining after part of a unit is taken under this
15 subsection is thereafter a common element.

16 (b) Except as provided in subsection (a), if part of a unit
17 is acquired by eminent domain, the award must compensate
18 the unit owner for the reduction in value of the unit and its
19 interest in the common elements, whether or not any
20 common elements are acquired. Upon acquisition, unless
21 the decree otherwise provides, (i) that unit's allocated
22 interests are reduced in proportion to the reduction in the
23 size of the unit, or on any other basis specified in the
24 declaration and (ii) the portion of the allocated interests
25 divested from the partially acquired unit are automatically
26 reallocated to that unit and to the remaining units in
27 proportion to the respective allocated interests of those
28 units before the taking, with the partially acquired unit
29 participating in the reallocation on the basis of its reduced
30 allocated interests.

31 (c) If part of the common elements is acquired by
32 eminent domain, the portion of the award attributable to
33 the common elements taken must be paid to the association.
34 Unless the declaration provides otherwise, any portion of
35 the award attributable to the acquisition of a limited
36 common element must be equally divided among the

37 owners of the units to which that limited common element
38 was allocated at the time of acquisition.

39 (d) The court decree must be recorded in every county in
40 which any portion of the common interest community is
41 located.

§36B-1-108. Supplemental general principles of law applicable.

1 The principles of law and equity, including the law of
2 corporations and unincorporated associations, the law of
3 real property, and the law relative to capacity to contract,
4 principal and agent, eminent domain, estoppel, fraud,
5 misrepresentation, duress, coercion, mistake, receivership,
6 substantial performance, or other validating or
7 invalidating cause supplement the provisions of this
8 chapter, except to the extent inconsistent with this chapter.

§36B-1-109. Construction against implicit repeal.

1 This chapter being a general act intended as a unified
2 coverage of its subject matter, no part of it shall be
3 construed to be impliedly repealed by subsequent
4 legislation if that construction can reasonably be avoided.

§36B-1-110. Uniformity of application and construction.

1 This chapter shall be applied and construed so as to
2 effectuate its general purpose to make uniform the law with
3 respect to the subject of this chapter among states enacting
4 it.

§36B-1-111. Unconscionable agreement or term of contract.

1 (a) The court, upon finding as a matter of law that a
2 contract or contract clause was unconscionable at the time
3 the contract was made, may refuse to enforce the contract,
4 enforce the remainder of the contract without the
5 unconscionable clause, or limit the application of any
6 unconscionable clause in order to avoid an unconscionable
7 result.

8 (b) Whenever it is claimed, or appears to the court, that
9 a contract or any contract clause is or may be
10 unconscionable, the parties, in order to aid the court in
11 making the determination, must be afforded a reasonable
12 opportunity to present evidence as to:

- 13 (1) The commercial setting of the negotiations;
14 (2) Whether a party has knowingly taken advantage of
15 the inability of the other party reasonably to protect his
16 interests by reason of physical or mental infirmity,
17 illiteracy, inability to understand the language of the
18 agreement, or similar factors;
19 (3) The effect and purpose of the contract or clause; and
20 (4) If a sale, any gross disparity, at the time of
21 contracting, between the amount charged for the property
22 and the value of that property measured by the price at
23 which similar property was readily obtainable in similar
24 transactions. A disparity between the contract price and the
25 value of the property measured by the price at which similar
26 property was readily obtainable in similar transactions
27 does not, of itself, render the contract unconscionable.

§36B-1-112. Obligation of good faith.

- 1 Every contract or duty governed by this chapter imposes
2 an obligation of good faith in its performance or
3 enforcement.

§36B-1-113. Remedies to be liberally administered.

- 1 (a) The remedies provided by this chapter shall be
2 liberally administered to the end that the aggrieved party is
3 put in as good a position as if the other party had fully
4 performed. However, consequential, special or punitive
5 damages may not be awarded except as specifically
6 provided in this chapter or by other rule of law.
7 (b) Any right or obligation declared by this chapter is
8 enforceable by judicial proceeding.

§36B-1-114. Adjustment of dollar amounts.

- 1 (a) From time to time the dollar amounts specified in
2 sections 1-203 and 4-101(b)(7) must change, as provided in
3 subsections (b) and (c), according to and to the extent of
4 changes in the Consumer Price Index for Urban Wage
5 Earners and Clerical Workers: United States City Average,
6 All Items 1967=100, compiled by the Bureau of Labor
7 Statistics, United States Department of Labor, (the
8 "Index"). The Index for December, 1979, which was 230, is
9 the Reference Base Index.

10 (b) The dollar amounts specified in sections 1-203 and
11 4-101(b)(7), and any amount stated in the declaration
12 pursuant to those sections, must change July 1 of each year
13 if the percentage of change, calculated to the nearest whole
14 percentage point, between the Index at the end of the
15 preceding year and the Reference Base Index is ten percent
16 or more, but

17 (i) The portion of the percentage change in the Index in
18 excess of a multiple of ten percent must be disregarded and
19 the dollar amounts shall change only in multiples of ten
20 percent of the amounts appearing in this chapter on the date
21 of enactment;

22 (ii) The dollar amounts must not change if the amounts
23 required by this section are those currently in effect
24 pursuant to this chapter as a result of earlier application of
25 this section; and

26 (iii) In no event may the dollar amounts be reduced
27 below the amounts appearing in this chapter on the date of
28 enactment.

29 (c) If the Index is revised after December, 1979, the
30 percentage of change pursuant to this section must be
31 calculated on the basis of the revised Index. If the revision
32 of the Index Changes the Reference Base Index, a revised
33 Reference Base Index must be determined by multiplying
34 the Reference Base Index then applicable by the rebasing
35 factor furnished by the Bureau of Labor Statistics. If the
36 Index is superseded, the index referred to in this section is
37 the one represented by the Bureau of Labor Statistics as
38 reflecting most accurately changes in the purchasing power
39 of the dollar for consumers.

PART II. APPLICABILITY.

§36B-1-201. Applicability to new common interest communities.

1 Except as provided in sections 1-202 and 1-203, this
2 chapter applies to all common interest communities created
3 within this state after the effective date of this chapter. The
4 provisions of chapter one hundred fifty-three, acts of the
5 Legislature, one thousand nine hundred sixty-three,
6 chapter one hundred twenty-nine, acts of the Legislature,
7 one thousand nine hundred eighty, and chapter thirty-

8 eight, acts of the Legislature, one thousand nine hundred
9 eighty-four, do not apply to common interest communities
10 created after the effective date of this chapter.

§36B-1-202. Same—Exception for small cooperatives.

1 If a cooperative contains only units restricted to
2 nonresidential use, or contains no more than twelve units
3 and is not subject to any development rights, it is subject
4 only to sections 1-106, (applicability of local ordinances,
5 regulations, and building codes) and 1-107 (eminent
6 domain) of this chapter, unless the declaration provides
7 that the entire chapter is applicable.

**§36B-1-203. Same—Exception for small and limited
expense liability planned communities.**

1 If a planned community:
2 (1) Contains no more than twelve units and is not
3 subject to any development rights; or
4 (2) Provides, in its declaration, that the annual average
5 common expense liability of all units restricted to
6 residential purposes, exclusive of optional user fees and any
7 insurance premiums paid by the association, may not
8 exceed \$100, as adjusted pursuant to section 1-114
9 (adjustment of dollar amounts) it is subject only to sections
10 1-105 (separate titles and taxation) 1-106 (applicability of
11 local ordinances, regulations and building codes) and 1-107
12 (eminent domain) unless the declaration provides that this
13 entire chapter is applicable.

**§36B-1-204. Applicability to preexisting common interest
communities.**

1 (a) Except as provided in section 1-205 (Same—
2 Exception for small preexisting cooperatives and planned
3 communities), sections 1-105 (Separate titles and taxa-
4 tion), 1-106 (Applicability of local ordinances, regulations
5 and building codes), 1-107 (Eminent domain), 2-103
6 (Construction and validity of declaration and bylaws),
7 2-104 (Description of units), 2-121 (Merger or consolidation
8 of common interest communities), 3-102(a)(1) through (6)
9 and (11) through (16) (Powers of unit owners' association),
10 3-111 (Tort and contract liability), 3-116 (Lien for
11 assessments), 3-118 (Association records), 4-109 (Resales of
12 units), and 4-117 (Effect of violation on rights of action;

13 attorney's fees), and section 1-103 (Definitions) to the
14 extent necessary in construing any of those sections, apply
15 to all common interest communities created in this state
16 before the effective date of this chapter; but those sections
17 apply only with respect to events and circumstances
18 occurring after the effective date of this chapter and do not
19 invalidate existing provisions of the declaration, bylaws or
20 plats or plans of those common interest communities.

21 (b) The provisions of chapter one hundred fifty-three,
22 Acts of the Legislature, one thousand nine hundred sixty-
23 three, chapter one hundred twenty-nine, Acts of the
24 Legislature, one thousand nine hundred eighty, or of
25 chapter thirty-eight, Acts of the Legislature, one thousand
26 nine hundred eighty-four, do not apply to condominiums or
27 other common interest communities created after the
28 effective date of this chapter and do not invalidate any
29 amendment to the declaration, rules, bylaws, plats and
30 plans and code of regulations of any condominium or
31 common interest community created before the effective
32 date of this chapter if the amendment would be permitted
33 by this chapter. The amendment must be adopted in
34 conformity with the procedures and requirements specified
35 by those instruments and by chapter one hundred fifty-
36 three, acts of the Legislature, one thousand nine hundred
37 sixty-three. If the amendment grants to any person any
38 rights, powers or privileges permitted by this chapter, all
39 correlative obligations, liabilities and restrictions in this
40 chapter also apply to that person.

41 (c) This chapter does not apply to condominiums or
42 units located outside this state, but the public offering
43 statement provisions, (sections 4-102 through 4-109) apply
44 to all contracts for the disposition thereof signed in this
45 state by any party unless exempt under section 4-101(b).

46 (d) The provisions of this chapter shall apply to all
47 condominiums or common interest communities to the
48 extent such provisions conflict or are inconsistent with the
49 provisions of chapter one hundred fifty-three, acts of the
50 Legislature, one thousand nine hundred sixty-three:
51 *Provided*, That the provisions of this chapter shall not
52 modify, limit or nullify any rights, duties or obligations
53 created or existing under any declaration, bylaws or plats
54 or plans of condominiums created in this state before the
55 effective date of this chapter.

§36B-1-205. Same—Exception for small preexisting cooperatives and planned communities.

1 If a cooperative or planned community created within
2 this state before the effective date of this chapter contains
3 no more than twelve units and is not subject to any
4 development rights, it is subject only to sections 1-105
5 (separate titles and taxation), 1-106 (applicability of local
6 ordinances, regulations and building codes), and 1-107
7 (eminent domain) unless the declaration is amended in
8 conformity with applicable law and with the procedures
9 and requirements of the declaration to take advantage of
10 the provisions of section 1-206, in which case all the
11 sections enumerated in section 1-204 apply to that
12 cooperative or planned community.

§36B-1-206. Same—Amendments to governing instruments.

1 (a) In the case of amendments to the declaration, bylaws
2 or plats and plans of any common interest community
3 created before the effective date of this chapter:
4 (1) If the result accomplished by the amendment was
5 permitted by law prior to this chapter, the amendment may
6 be made either in accordance with that law, in which case
7 that law applies to that amendment, or it may be made
8 under this chapter; and
9 (2) If the result accomplished by the amendment is
10 permitted by this chapter, and was not permitted by law
11 prior to this chapter, the amendment may be made under
12 this chapter.
13 (b) An amendment to the declaration, bylaws or plats
14 and plans authorized by this section to be made under this
15 chapter must be adopted in conformity with applicable law
16 and with the procedures and requirements specified by
17 those instruments. If an amendment grants to any person
18 any rights, powers or privileges permitted by this chapter,
19 all correlative obligations, liabilities and restrictions in this
20 chapter also apply to that person.

§36B-1-207. Applicability to nonresidential planned communities.

1 This chapter does not apply to a planned community in
2 which all units are restricted exclusively to nonresidential
3 use unless the declaration provides that the chapter does

4 apply to that planned community. This chapter applies to a
5 planned community containing both units that are
6 restricted exclusively to nonresidential use and other units
7 that are not so restricted, only if the declaration so provides
8 or the real estate comprising the units that may be used for
9 residential purposes would be a planned community in the
10 absence of the units that may not be used for residential
11 purposes.

**ARTICLE 2. CREATION, ALTERATION AND TERMINATION OF COMMON
INTEREST COMMUNITIES.**

- §36B-2-101. Creation of common interest communities.
- §36B-2-102. Unit boundaries.
- §36B-2-103. Construction and validity of declaration and bylaws.
- §36B-2-104. Description of units.
- §36B-2-105. Contents of declaration.
- §36B-2-106. Leasehold common interest communities.
- §36B-2-107. Allocation of allocated interests.
- §36B-2-108. Limited common elements.
- §36B-2-109. Plats and plans.
- §36B-2-110. Exercise of development rights.
- §36B-2-111. Alterations of units.
- §36B-2-112. Relocation of boundaries between adjoining units.
- §36B-2-113. Subdivision of units.
- §36B-2-114. Monuments as boundaries.
- §36B-2-115. Use for sales purposes.
- §36B-2-116. Easement rights.
- §36B-2-117. Amendment of declaration.
- §36B-2-118. Termination of common interest community.
- §36B-2-119. Rights of secured lenders.
- §36B-2-120. Master associations.
- §36B-2-121. Merger or consolidation of common interest communities.
- §36B-2-122. Addition of unspecified real estate.

§36B-2-101. Creation of common interest communities.

- 1 (a) A common interest community may be created
2 pursuant to this chapter only by recording a declaration
3 executed in the same manner as a deed and, in a
4 cooperative, by conveying the real estate subject to that
5 declaration to the association. The declaration must be
6 recorded in every county in which any portion of the
7 common interest community is located and must be indexed
8 in the grantee's index in the name of the common interest
9 community and the association and in the grantor's index in
10 the name of each person executing the declaration.
- 11 (b) In a condominium, a declaration or an amendment to

12 a declaration, adding units may not be recorded unless (i) all
13 structural components and mechanical systems of all
14 buildings containing or comprising any units thereby
15 created are substantially completed in accordance with the
16 plans, as evidenced by a recorded certificate of completion
17 executed by an independent registered engineer, surveyor
18 or architect.

§36B-2-102. Unit boundaries.

1 Except as provided by the declaration:

2 (1) If walls, floors or ceilings are designated as
3 boundaries of a unit, all lath, furring, wallboard,
4 plasterboard, plaster, paneling, tiles, wallpaper, paint,
5 finished flooring and any other materials constituting any
6 part of the finished surfaces thereof are a part of the unit,
7 and all other portions of the walls, floors or ceilings are a
8 part of the common elements.

9 (2) If any chute, flue, duct, wire, conduit, bearing wall,
10 bearing column or any other fixture lies partially within
11 and partially outside the designated boundaries of a unit,
12 any portion thereof serving only that unit is a limited
13 common element allocated solely to that unit, and any
14 portion thereof serving more than one unit or any portion of
15 the common elements is a part of the common elements.

16 (3) Subject to paragraph (2), all spaces, interior
17 partitions and other fixtures and improvements within the
18 boundaries of a unit are a part of the unit.

19 (4) Any shutters, awnings, window boxes, doorsteps,
20 stoops, porches, balconies, patios and all exterior doors and
21 windows or other fixtures designed to serve a single unit,
22 but located outside the unit's boundaries, are limited
23 common elements allocated exclusively to that unit.

§36B-2-103. Construction and validity of declaration and bylaws.

1 (a) All provisions of the declaration and bylaws are
2 severable.

3 (b) The rule against perpetuities does not apply to
4 defeat any provision of the declaration, bylaws, rules or
5 regulations adopted pursuant to section 3-102(a)(1).

6 (c) In the event of a conflict between the provisions of
7 the declaration and the bylaws, the declaration prevails

8 except to the extent the declaration is inconsistent with this
9 chapter.

10 (d) Title to a unit and common elements is not rendered
11 unmarketable or otherwise affected by reason of an
12 insubstantial failure of the declaration to comply with this
13 chapter. Whether a substantial failure impairs
14 marketability is not affected by this chapter.

§36B-2-104. Description of units.

1 A description of a unit which sets forth the name of the
2 common interest community, the recording data for the
3 declaration, the county in which the common interest
4 community is located, and the identifying number of the
5 unit, is a legally sufficient description of that unit and all
6 rights, obligations and interests appurtenant to that unit
7 which were created by the declaration or bylaws.

§36B-2-105. Contents of declaration.

1 (a) The declaration must contain:

2 (1) The names of the common interest community and
3 the association and a statement that the common interest
4 community is either a condominium, cooperative or
5 planned community;

6 (2) The name of every county in which any part of the
7 common interest community is situated;

8 (3) A legally sufficient description of the real estate
9 included in the common interest community;

10 (4) A statement of the maximum number of units that
11 the declarant reserves the right to create;

12 (5) In a condominium or planned community, a
13 description of the boundaries of each unit created by the
14 declaration, including the unit's identifying number or, in a
15 cooperative, a description, which may be by plats or plans,
16 of each unit created by the declaration, including the unit's
17 identifying number, its size or number of rooms and its
18 location within a building if it is within a building
19 containing more than one unit;

20 (6) A description of any limited common elements, other
21 than those specified in section 2-102(2) and (4), as provided
22 in section 2-109(b)(10) and, in a planned community, any
23 real estate that is or must become common elements;

24 (7) A description of any real estate, except real estate

25 subject to development rights, that may be allocated
26 subsequently as limited common elements, other than
27 limited common elements specified in section 2-102(2) and
28 (4), together with a statement that they may be so allocated;

29 (8) A description of any development rights (section
30 1-103(14)) and other special declarant rights (section
31 1-103(29)) reserved by the declarant, together with a legally
32 sufficient description of the real estate to which each of
33 those rights applies, and a time limit within which each of
34 those rights must be exercised;

35 (9) If any development right may be exercised with
36 respect to different parcels of real estate at different times,
37 a statement to that effect together with (i) either a statement
38 fixing the boundaries of those portions and regulating the
39 order in which those portions may be subjected to the
40 exercise of each development right or a statement that no
41 assurances are made in those regards, and (ii) a statement as
42 to whether, if any development right is exercised in any
43 portion of the real estate subject to that development right,
44 that development right must be exercised in all or in any
45 other portion of the remainder of that real estate;

46 (10) Any other conditions or limitations under which
47 the rights described in paragraph (8) may be exercised or
48 will lapse;

49 (11) An allocation to each unit of the allocated interests
50 in the manner described in section 2-107;

51 (12) Any restrictions (i) on use, occupancy and
52 alienation of the units, and (ii) on the amount for which a
53 unit may be sold or on the amount that may be received by a
54 unit owner on sale, condemnation or casualty loss to the
55 unit or to the common interest community or on
56 termination of the common interest community;

57 (13) The recording data for recorded easements and
58 licenses appurtenant to or included in the common interest
59 community or to which any portion of the common interest
60 community is or may become subject by virtue of a
61 reservation in the declaration; and

62 (14) All matters required by sections 2-106, 2-107, 2-
63 108, 2-109, 2-115, 2-116 and 3-103(d).

64 (b) The declaration may contain any other matters the
65 declarant considers appropriate.

§36B-2-106. Leasehold common interest communities.

1 (a) Any lease, the expiration or termination of which
2 may terminate the common interest community or reduce
3 its size, must be recorded. Every lessor of those leases in a
4 condominium or planned community shall sign the
5 declaration. The declaration must state:

6 (1) The recording data for the lease;

7 (2) The date on which the lease is scheduled to expire;

8 (3) A legally sufficient description of the real estate
9 subject to the lease;

10 (4) Any right of the unit owners to redeem the reversion
11 and the manner whereby those rights may be exercised or a
12 statement that they do not have those rights;

13 (5) Any right of the unit owners to remove any
14 improvements within a reasonable time after the expiration
15 or termination of the lease or a statement that they do not
16 have those rights; and

17 (6) Any rights of the unit owners to renew the lease and
18 the conditions of any renewal or a statement that they do
19 not have those rights.

20 (b) After the declaration for a leasehold condominium
21 or leasehold planned community is recorded, neither the
22 lessor nor the lessor's successor in interest may terminate
23 the leasehold interest of a unit owner who makes timely
24 payment of a unit owner's share of the rent and otherwise
25 complies with all covenants which, if violated, would
26 entitle the lessor to terminate the lease. A unit owner's
27 leasehold interest in a condominium or planned community
28 is not affected by failure of any other person to pay rent or
29 fulfill any other covenant.

30 (c) Acquisition of the leasehold interest of any unit
31 owner by the owner of the reversion or remainder does not
32 merge the leasehold and fee simple interests unless the
33 leasehold interests of all unit owners subject to that
34 reversion or remainder are acquired.

35 (d) If the expiration or termination of a lease decreases
36 the number of units in a common interest community, the
37 allocated interests must be reallocated in accordance with
38 section 1-107(a) as if those units had been taken by eminent
39 domain. Reallocations must be confirmed by an amendment
40 to the declaration prepared, executed and recorded by the
41 association.

§36B-2-107. Allocation of allocated interests.

1 (a) The declaration must allocate to each unit:

2 (i) In a condominium, a fraction or percentage of
3 undivided interests in the common elements and in the
4 common expenses of the association, (section 3-115(a)) and
5 a portion of the votes in the association;

6 (ii) In a cooperative, an ownership interest in the
7 association, a fraction or percentage of the common
8 expenses of the association (section 3-115(a)) and a portion
9 of the votes in the association; and

10 (iii) In a planned community, a fraction or percentage of
11 the common expenses of the association (section 3-115(a))
12 and a portion of the votes in the association.

13 (b) The declaration must state the formulas used to
14 establish allocations of interests. Those allocations may not
15 discriminate in favor of units owned by the declarant or an
16 affiliate of the declarant.

17 (c) If units may be added to or withdrawn from the
18 common interest community, the declaration must state the
19 formulas to be used to reallocate the allocated interests
20 among all units included in the common interest
21 community after the addition or withdrawal.

22 (d) The declaration may provide: (i) That different
23 allocations of votes shall be made to the units on particular
24 matters specified in the declaration; (ii) for cumulative
25 voting only for the purpose of electing members of the
26 executive board; and (iii) for class voting on specified issues
27 affecting the class if necessary to protect valid interests of
28 the class. A declarant may not utilize cumulative or class
29 voting for the purpose of evading any limitation imposed on
30 declarants by this chapter nor may units constitute a class
31 because they are owned by a declarant.

32 (e) Except for minor variations due to rounding, the sum
33 of the common expense liabilities and, in a condominium,
34 the sum of the undivided interests in the common elements
35 allocated at any time to all the units must each equal one if
36 stated as a fraction or one hundred percent if stated as a
37 percentage. In the event of discrepancy between an
38 allocated interest and the result derived from application of
39 the pertinent formula, the allocated interest prevails.

40 (f) In a condominium, the common elements are not
41 subject to partition and any purported conveyance,

42 encumbrance, judicial sale or other voluntary or
43 involuntary transfer of an undivided interest in the
44 common elements made without the unit to which that
45 interest is allocated is void.

46 (g) In a cooperative, any purported conveyance,
47 encumbrance, judicial sale or other voluntary or
48 involuntary transfer of an ownership interest in the
49 association made without the possessory interest in the unit
50 to which that interest is related is void.

§36B-2-108. Limited common elements.

1 (a) Except for the limited common elements described
2 in section 2-102(2) and (4), the declaration must specify to
3 which unit or units each limited common element is
4 allocated. An allocation may not be altered without the
5 consent of the unit owners whose units are affected.

6 (b) Except as the declaration otherwise provides, a
7 limited common element may be reallocated by an
8 amendment to the declaration executed by the unit owners
9 between or among whose units the reallocation is made. The
10 persons executing the amendment shall provide a copy
11 thereof to the association, which shall record it. The
12 amendment must be recorded in the names of the parties
13 and the common interest community.

14 (c) A common element not previously allocated as a
15 limited common element may be so allocated only pursuant
16 to provisions in the declaration made in accordance with
17 section 2-105(a)(7). The allocations must be made by
18 amendments to the declaration.

§36B-2-109. Plats and plans.

1 (a) Plats and plans are a part of the declaration and are
2 required for all common interest communities except
3 cooperatives. Separate plats and plans are not required by
4 this chapter if all the information required by this section is
5 contained in either a plat or plan. Each plat and plan must
6 be clear and legible and contain a certification that the plat
7 or plan contains all information required by this section.

8 (b) Each plat must show:

9 (1) The name and a survey or general schematic map of
10 the entire common interest community;

11 (2) The location and dimensions of all real estate not

12 subject to development rights or subject only to the
13 development right to withdraw and the location and
14 dimensions of all existing improvements within that real
15 estate;

16 (3) A legally sufficient description of any real estate
17 subject to development rights, labeled to identify the rights
18 applicable to each parcel;

19 (4) The extent of any encroachments by or upon any
20 portion of the common interest community;

21 (5) To the extent feasible, a legally sufficient
22 description of all easements serving or burdening any
23 portion of the common interest community;

24 (6) The location and dimensions of any vertical unit
25 boundaries not shown or projected on plans recorded
26 pursuant to subsection (d) and that unit's identifying
27 number;

28 (7) The location with reference to an established datum
29 of any horizontal unit boundaries not shown or projected on
30 plans recorded pursuant to subsection (d) and that unit's
31 identifying number;

32 (8) A legally sufficient description of any real estate in
33 which the unit owners will own only an estate for years,
34 labeled as "leasehold real estate";

35 (9) The distance between noncontiguous parcels of real
36 estate comprising the common interest community;

37 (10) The location and dimensions of limited common
38 elements, including porches, balconies and patios, other
39 than parking spaces and the other limited common
40 elements described in sections 2-102(2) and (4); and

41 (11) In the case of real estate not subject to development
42 rights, all other matters customarily shown on land surveys.

43 (c) A plat may also show the intended location and
44 dimensions of any contemplated improvement to be
45 constructed anywhere within the common interest
46 community. Any contemplated improvement shown must
47 be labeled either "MUST BE BUILT" or "NEED NOT BE
48 BUILT".

49 (d) To the extent not shown or projected on the plats,
50 plans of the units must show or project:

51 (1) The location and dimensions of the vertical
52 boundaries of each unit and that unit's identifying number;

53 (2) Any horizontal unit boundaries, with reference to an
54 established datum and that unit's identifying number; and

55 (3) Any units in which the declarant has reserved the
56 right to create additional units or common elements
57 (section 2-110(c)), identified appropriately.

58 (e) Unless the declaration provides otherwise, the
59 horizontal boundaries of part of a unit located outside a
60 building have the same elevation as the horizontal
61 boundaries of the inside part and need not be depicted on
62 the plats and plans.

63 (f) Upon exercising any development right, the
64 declarant shall record either new plats and plans necessary
65 to conform to the requirements of subsections (a), (b) and (d)
66 or new certifications of plats and plans previously recorded
67 if those plats and plans otherwise conform to the
68 requirements of those subsections.

69 (g) Any certification of a plat or plan required by this
70 section or section 2-101(b) must be made by an independent
71 (registered) surveyor, architect or engineer.

§36B-2-110. Exercise of development rights.

1 (a) To exercise any development right reserved under
2 section 2-105(a)(8), the declarant shall prepare, execute and
3 record an amendment to the declaration (section 2-117) and
4 in a condominium or planned community comply with
5 section 2-109. The declarant is the unit owner of any units
6 thereby created. The amendment to the declaration must
7 assign an identifying number to each new unit created, and,
8 except in the case of subdivision or conversion of units
9 described in subsection (b), reallocate the allocated
10 interests among all units. The amendment must describe
11 any common elements and any limited common elements
12 thereby created and, in the case of limited common
13 elements, designate the unit to which each is allocated to
14 the extent required by section 2-108 (Limited common
15 elements).

16 (b) Development rights may be reserved within any real
17 estate added to the common interest community if the
18 amendment adding that real estate includes all matters
19 required by section 2-105 or 2-106, as the case may be, and,
20 in a condominium or planned community, the plats and
21 plans include all matters required by section 2-109. This
22 provision does not extend the time limit on the exercise of
23 development rights imposed by the declaration pursuant to
24 section 2-105(a)(8).

25 (c) Whenever a declarant exercises a development right
26 to subdivide or convert a unit previously created into
27 additional units, common elements or both:

28 (1) If the declarant converts the unit entirely to common
29 elements, the amendment to the declaration must reallocate
30 all the allocated interests of that unit among the other units
31 as if that unit had been taken by eminent domain (section
32 1-107); and

33 (2) If the declarant subdivides the unit into two or more
34 units, whether or not any part of the unit is converted into
35 common elements, the amendment to the declaration must
36 reallocate all the allocated interests of the unit among the
37 units created by the subdivision in any reasonable manner
38 prescribed by the declarant.

39 (d) If the declaration provides, pursuant to section
40 2-105(a)(8), that all or a portion of the real estate is subject
41 to a right of withdrawal:

42 (1) If all the real estate is subject to withdrawal and the
43 declaration does not describe separate portions of real
44 estate subject to that right, none of the real estate may be
45 withdrawn after a unit has been conveyed to a purchaser;
46 and

47 (2) If any portion is subject to withdrawal, it may not be
48 withdrawn after a unit in that portion has been conveyed to
49 a purchaser.

§36B-2-111. Alterations of units.

1 Subject to the provisions of the declaration and other
2 provisions of law, a unit owner:

3 (1) May make any improvements or alterations to his
4 unit that do not impair the structural integrity or
5 mechanical systems or lessen the support of any portion of
6 the common interest community;

7 (2) May not change the appearance of the common
8 elements or the exterior appearance of a unit or any other
9 portion of the common interest community, without
10 permission of the association; and

11 (3) After acquiring an adjoining unit or an adjoining
12 part of an adjoining unit, may remove or alter any
13 intervening partition or create apertures therein, even if the
14 partition in whole or in part is a common element, if those
15 acts do not impair the structural integrity or mechanical

16 systems or lessen the support of any portion of the common
17 interest community. Removal of partitions or creation of
18 apertures under this paragraph is not an alteration of
19 boundaries.

§36B-2-112. Relocation of boundaries between adjoining units.

1 (a) Subject to the provisions of the declaration and
2 other provisions of law, the boundaries between adjoining
3 units may be relocated by an amendment to the declaration
4 upon application to the association by the owners of those
5 units. If the owners of the adjoining units have specified a
6 reallocation between their units of their allocated interests,
7 the application must state the proposed reallocations.
8 Unless the executive board determines, within thirty days,
9 that the reallocations are unreasonable, the association
10 shall prepare an amendment that identifies the units
11 involved and states the reallocations. The amendment must
12 be executed by those unit owners, contain words of
13 conveyance between them, and, on recordation, be indexed
14 in the name of the grantor and the grantee, and in the
15 grantee's index in the name of the association.

16 (b) The association (i) in a condominium or planned
17 community shall prepare and record plats or plans
18 necessary to show the altered boundaries between
19 adjoining units and their dimensions and identifying
20 numbers, and (ii) in a cooperative shall prepare and record
21 amendments to the declaration, including any plans,
22 necessary to show or describe the altered boundaries
23 between adjoining units and their dimensions and
24 identifying numbers.

§36B-2-113. Subdivision of units.

1 (a) If the declaration expressly so permits, a unit may be
2 subdivided into two or more units. Subject to the provisions
3 of the declaration and other provisions of law, upon
4 application of a unit owner to subdivide a unit, the
5 association shall prepare, execute and record an
6 amendment to the declaration, including in a condominium
7 or planned community the plats and plans, subdividing that
8 unit.

9 (b) The amendment to the declaration must be executed

10 by the owner of the unit to be subdivided, assign an
11 identifying number to each unit created and reallocate the
12 allocated interests formerly allocated to the subdivided
13 unit to the new units in any reasonable manner prescribed
14 by the owner of the subdivided unit.

§36B-2-114. Monuments as boundaries.

1 The existing physical boundaries of a unit or the physical
2 boundaries of a unit reconstructed in substantial
3 accordance with the description contained in the original
4 declaration are its legal boundaries, rather than the
5 boundaries derived from the description contained in the
6 original declaration, regardless of vertical or lateral
7 movement of the building or minor variance between those
8 boundaries and the boundaries derived from the
9 description contained in the original declaration. This
10 section does not relieve a unit owner of liability in case of
11 his willful misconduct or relieve a declarant or any other
12 person of liability for failure to adhere to any plats and
13 plans or, in a cooperative, to any representation in the
14 public offering statement.

§36B-2-115. Use for sales purposes.

1 A declarant may maintain sales offices, management
2 offices and models in units or on common elements in the
3 common interest community only if the declaration so
4 provides and specifies the rights of a declarant with regard
5 to the number, size, location and relocation thereof. In a
6 cooperative or condominium, any sales office, management
7 office or model not designated a unit by the declaration is a
8 common element. If a declarant ceases to be a unit owner, he
9 ceases to have any rights with regard thereto unless it is
10 removed promptly from the common interest community in
11 accordance with a right to remove reserved in the
12 declaration. Subject to any limitations in the declaration, a
13 declarant may maintain signs on the common elements
14 advertising the common interest community. This section is
15 subject to the provisions of other state law and to local
16 ordinances.

§36B-2-116. Easement rights.

1 (a) Subject to the provisions of the declaration, a

2 declarant has an easement through the common elements as
3 may be reasonably necessary for the purpose of discharging
4 the declarant's obligations or exercising special declarant
5 rights, whether arising under this chapter or reserved in the
6 declaration.

7 (b) In a planned community, subject to the provisions of
8 sections 3-102(a)(6) and 3-112, the unit owners have an
9 easement (i) in the common elements for purposes of access
10 to their units and (ii) to use the common elements and all
11 real estate that must become common elements (section
12 2-105(a)(6)) for all other purposes.

§36B-2-117. Amendment of declaration.

1 (a) Except in cases of amendments that may be executed
2 by a declarant under section 2-109(f) or 2-110, or by the
3 association under section 1-107, 2-106(d), 2-108(c),
4 2-112(a), or 2-113, or by certain unit owners under section
5 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as
6 limited by subsection (d), the declaration, including any
7 plats and plans, may be amended only by vote or agreement
8 of unit owners of units to which at least sixty-seven percent
9 of the votes in the association are allocated, or any larger
10 majority the declaration specifies. The declaration may
11 specify a smaller number only if all of the units are
12 restricted exclusively to nonresidential use.

13 (b) No action to challenge the validity of an amendment
14 adopted by the association pursuant to this section may be
15 brought more than one year after the amendment is
16 recorded.

17 (c) Every amendment to the declaration must be
18 recorded in every county in which any portion of the
19 common interest community is located and is effective only
20 upon recordation. An amendment, except an amendment
21 pursuant to section 2-112(a), must be indexed in the
22 grantee's index in the name of the common interest
23 community and the association and in the grantor's index in
24 the name of the parties executing the amendment.

25 (d) Except to the extent expressly permitted or required
26 by other provisions of this chapter, no amendment may
27 create or increase special declarant rights, increase the
28 number of units, change the boundaries of any unit, the
29 allocated interests of a unit, or the uses to which any unit is

30 restricted, in the absence of unanimous consent of the unit
31 owners.

32 (e) Amendments to the declaration required by this
33 chapter to be recorded by the association must be prepared,
34 executed, recorded, and certified on behalf of the
35 association by any officer of the association designated for
36 that purpose or, in the absence of designation, by the
37 president of the association.

§36B-2-118. Termination of common interest community.

1 (a) Except in the case of a taking of all the units by
2 eminent domain (section 1-107) or in the case of foreclosure
3 against an entire cooperative of a security interest that has
4 priority over the declaration, a common interest community
5 may be terminated only by agreement of unit owners of
6 units to which at least eighty percent of the votes in the
7 association are allocated, or any larger percentage the
8 declaration specifies. The declaration may specify a smaller
9 percentage only if all of the units are restricted exclusively
10 to nonresidential uses.

11 (b) An agreement to terminate must be evidenced by the
12 execution of a termination agreement, or ratifications
13 thereof, in the same manner as a deed, by the requisite
14 number of unit owners. The termination agreement must
15 specify a date after which the agreement will be void unless
16 it is recorded before that date. A termination agreement and
17 all ratifications thereof must be recorded in every county in
18 which a portion of the common interest community is
19 situated and is effective only upon recordation.

20 (c) In the case of a condominium or planned community
21 containing only units having horizontal boundaries
22 described in the declaration, a termination agreement may
23 provide that all of the common elements and units of the
24 common interest community must be sold following
25 termination. If, pursuant to the agreement, any real estate
26 in the common interest community is to be sold following
27 termination, the termination agreement must set forth the
28 minimum terms of the sale.

29 (d) In the case of a condominium or planned community
30 containing any units not having horizontal boundaries
31 described in the declaration, a termination agreement may
32 provide for sale of the common elements, but it may not

33 require that the units be sold following termination, unless
34 the declaration as originally recorded provided otherwise
35 or all the unit owners consent to the sale.

36 (e) The association, on behalf of the unit owners, may
37 contract for the sale of real estate in a common interest
38 community, but the contract is not binding on the unit
39 owners until approved pursuant to subsections (a) and (b).
40 If any real estate is to be sold following termination, title to
41 that real estate, upon termination, vests in the association
42 as trustee for the holders of all interests in the units.
43 Thereafter, the association has all powers necessary and
44 appropriate to effect the sale. Until the sale has been
45 concluded and the proceeds thereof distributed, the
46 association continues in existence with all powers it had
47 before termination. Proceeds of the sale must be distributed
48 to unit owners and lien holders as their interests may
49 appear, in accordance with subsections (h), (i) and (j).
50 Unless otherwise specified in the termination agreement, as
51 long as the association holds title to the real estate, each
52 unit owner and the unit owner's successors in interest have
53 an exclusive right to occupancy of the portion of the real
54 estate that formerly constituted the unit. During the period
55 of that occupancy, each unit owner and the unit owner's
56 successors in interest remain liable for all assessments and
57 other obligations imposed on unit owners by this chapter or
58 the declaration.

59 (f) In a condominium or planned community, if the real
60 estate constituting the common interest community is not to
61 be sold following termination, title to the common elements
62 and, in a common interest community containing only units
63 having horizontal boundaries described in the declaration,
64 title to all the real estate in the common interest community,
65 vests in the unit owners upon termination as tenants in
66 common in proportion to their respective interests as
67 provided in subsection (j), and liens on the units shift
68 accordingly. While the tenancy in common exists, each unit
69 owner and the unit owner's successors in interest have an
70 exclusive right to occupancy of the portion of the real estate
71 that formerly constituted the unit.

72 (g) Following termination of the common interest
73 community, the proceeds of any sale of real estate, together
74 with the assets of the association, are held by the

75 association as trustee for unit owners and holders of liens on
76 the units as their interests may appear.

77 (h) Following termination of a condominium or planned
78 community, creditors of the association holding liens on the
79 units, which were recorded before termination, may enforce
80 those liens in the same manner as any lien holder. All other
81 creditors of the association are to be treated as if they had
82 perfected liens on the units immediately before
83 termination.

84 (i) In a cooperative, the declaration may provide that all
85 creditors of the association have priority over any interests
86 of unit owners and creditors of unit owners. In that event,
87 following termination, creditors of the association holding
88 liens on the cooperative which were recorded before
89 termination may enforce their liens in the same manner as
90 any lien holder, and any other creditor of the association is
91 to be treated as if he had perfected a lien against the
92 cooperative immediately before termination. Unless the
93 declaration provides that all creditors of the association
94 have that priority:

95 (1) The lien of each creditor of the association which
96 was perfected against the association before termination
97 becomes, upon termination, a lien against each unit owner's
98 interest in the unit as of the date the lien was perfected;

99 (2) Any other creditor of the association is to be treated
100 upon termination as if the creditor had perfected a lien
101 against each unit owner's interest immediately before
102 termination;

103 (3) The amount of the lien of an association's creditor
104 described in paragraphs (1) and (2) against each of the unit
105 owners' interest must be proportionate to the ratio which
106 each unit's common expense liability bears to the common
107 expense liability of all of the units;

108 (4) The lien of each creditor of each unit owner which
109 was perfected before termination continues as a lien against
110 that unit owner's unit as of the date the lien was perfected;
111 and

112 (5) The assets of the association must be distributed to
113 all unit owners and all lien holders as their interests may
114 appear in the order described above. Creditors of the
115 association are not entitled to payment from any unit owner
116 in excess of the amount of the creditor's lien against that

117 unit owner's interest.

118 (j) The respective interests of unit owners referred to in
119 subsections (e), (f), (g), (h), and (i) are as follows:

120 (1) Except as provided in paragraph (2), the respective
121 interests of unit owners are the fair market values of their
122 units, allocated interests, and any limited common elements
123 immediately before the termination, as determined by one
124 or more independent appraisers selected by the association.
125 The decision of the independent appraisers must be
126 distributed to the unit owners and becomes final unless
127 disapproved within thirty days after distribution by unit
128 owners of units to which twenty-five percent of the votes in
129 the association are allocated. The proportion of any unit
130 owner's interest to that of all unit owners is determined by
131 dividing the fair market value of that unit owner's unit and
132 its allocated interests by the total fair market values of all
133 the units and their allocated interests.

134 (2) If any unit or any limited common element is
135 destroyed to the extent that an appraisal of the fair market
136 value thereof before destruction cannot be made, the
137 interests of all unit owners are: (i) In a condominium, their
138 respective common element interests immediately before
139 the termination; (ii) in a cooperative, their respective
140 ownership interests immediately before the termination;
141 and (iii) in a planned community, their respective common
142 expense liabilities immediately before the termination.

143 (k) In a condominium or planned community, except as
144 provided in subsection (1), foreclosure or enforcement of a
145 lien or encumbrance against the entire common interest
146 community does not terminate, of itself, the common
147 interest community, and foreclosure or enforcement of a
148 lien or encumbrance against a portion of the common
149 interest community, other than withdrawable real estate,
150 does not withdraw that portion from the common interest
151 community. Foreclosure or enforcement of a lien or
152 encumbrance against withdrawable real estate does not
153 withdraw, of itself, that real estate from the common
154 interest community, but the person taking title thereto may
155 require from the association, upon request, an amendment
156 excluding the real estate from the common interest
157 community.

158 (l) In a condominium or planned community, if a lien or

159 encumbrance against a portion of the real estate comprising
160 the common interest community has priority over the
161 declaration and the lien or encumbrance has not been
162 partially released, the parties foreclosing the lien or
163 encumbrance, upon foreclosure, may record an instrument
164 excluding the real estate subject to that lien or
165 encumbrance from the common interest community.

§36B-2-119. Rights of secured lenders.

1 The declaration may require that all or a specified
2 number or percentage of the lenders who hold security
3 interests encumbering the units approve specified actions
4 of the unit owners or the association as a condition to the
5 effectiveness of those actions, but no requirement for
6 approval may operate to (i) deny or delegate control over the
7 general administrative affairs of the association by the unit
8 owners or the executive board, or (ii) prevent the
9 association or the executive board from commencing,
10 intervening in, or settling any litigation or proceeding, or
11 (iii) prevent any insurance trustee or the association from
12 receiving and distributing any insurance proceeds except
13 pursuant to section 3-113.

§36B-2-120. Master associations.

1 (a) If the declaration provides that any of the powers
2 described in section 3-102 are to be exercised by or may be
3 delegated to a profit or nonprofit corporation or to an
4 unincorporated association that exercises those or other
5 powers on behalf of one or more common interest
6 communities or for the benefit of the unit owners of one or
7 more common interest communities, all provisions of this
8 chapter applicable to unit owners' associations apply to any
9 such corporation or unincorporated association except as
10 modified by this section.

11 (b) Unless it is acting in the capacity of an association
12 described in section 3-101, a master association may
13 exercise the powers set forth in section 3-102(a)(2) only to
14 the extent expressly permitted in the declarations of
15 common interest communities which are part of the master
16 association or expressly described in the delegations of
17 power from those common interest communities to the
18 master association.

19 (c) If the declaration of any common interest
20 community provides that the executive board may delegate
21 certain powers to a master association, the members of the
22 executive board have no liability for the acts or omissions of
23 the master association with respect to those powers
24 following delegation.

25 (d) The rights and responsibilities of unit owners with
26 respect to the unit owners' association set forth in sections
27 3-103, 3-108, 3-109, 3-110 and 3-112 apply in the conduct of
28 the affairs of a master association only to persons who elect
29 the board of a master association, whether or not those
30 persons are otherwise unit owners within the meaning of
31 this chapter.

32 (e) Even if a master association is also an association
33 described in section 3-101, the certificate of incorporation
34 or other instrument creating the master association and the
35 declaration of each common interest community the powers
36 of which are assigned by the declaration or delegated to the
37 master association, may provide that the executive board of
38 the master association must be elected after the period of
39 declarant control in any of the following ways:

40 (1) All unit owners of all common interest communities
41 subject to the master association may elect all members of
42 the master association's executive board.

43 (2) All members of the executive boards of all common
44 interest communities subject to the master association may
45 elect all members of the master association's executive
46 board.

47 (3) All unit owners of each common interest community
48 subject to the master association may elect specified
49 members of the master association's executive board.

50 (4) All members of the executive board of each common
51 interest community subject to the master association may
52 elect specified members of the master association's
53 executive board.

**§36B-2-121. Merger or consolidation of common interest
communities.**

1 (a) Any two or more common interest communities of
2 the same form of ownership, by agreement of the unit
3 owners as provided in subsection (b), may be merged or
4 consolidated into a single common interest community. In

5 the event of a merger or consolidation, unless the agreement
6 otherwise provides, the resultant common interest
7 community is the legal successor, for all purposes, of all of
8 the preexisting common interest communities, and the
9 operations and activities of all associations of the
10 preexisting common interest communities are merged or
11 consolidated into a single association that holds all powers,
12 rights, obligations, assets and liabilities of all preexisting
13 associations.

14 (b) An agreement of two or more common interest
15 communities to merge or consolidate pursuant to
16 subsection (a) must be evidenced by an agreement prepared,
17 executed, recorded, and certified by the president of the
18 association of each of the preexisting common interest
19 communities following approval by owners of units to
20 which are allocated the percentage of votes in each common
21 interest community required to terminate that common
22 interest community. The agreement must be recorded in
23 every county in which a portion of the common interest
24 community is located and is not effective until recorded.

25 (c) Every merger or consolidation agreement must
26 provide for the reallocation of the allocated interests in the
27 new association among the units of the resultant common
28 interest community either (i) by stating the reallocations or
29 the formulas upon which they are based or (ii) by stating the
30 percentage of overall allocated interests of the new common
31 interest community which are allocated to all of the units
32 comprising each of the preexisting common interest
33 communities, and providing that the portion of the
34 percentages allocated to each unit formerly comprising a
35 part of the preexisting common interest community must be
36 equal to the percentages of allocated interests allocated to
37 that unit by the declaration of the preexisting common
38 interest community.

§36B-2-122. Addition of unspecified real estate.

1 In a planned community, if the right is originally reserved
2 in the declaration, the declarant in addition to any other
3 development right, may amend the declaration at any time
4 during as many years as are specified in the declaration for
5 adding additional real estate to the planned community
6 without describing the location of that real estate in the

7 original declaration; but, the amount of real estate added to
8 the planned community pursuant to this section may not
9 exceed ten percent of the real estate described in section
10 2-105(a)(3) and the declarant may not in any event increase
11 the number of units in the planned community beyond the
12 number stated in the original declaration pursuant to
13 section 2-105(a)(5).

ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

- §36B-3-101. Organization of unit owners' association.
- §36B-3-102. Powers of unit owners' association.
- §36B-3-103. Executive board members and officers.
- §36B-3-104. Transfer of special declarant rights.
- §36B-3-105. Termination of contracts and leases of declarant.
- §36B-3-106. Bylaws.
- §36B-3-107. Upkeep of common interest community.
- §36B-3-108. Meetings.
- §36B-3-109. Quorums.
- §36B-3-110. Voting; proxies.
- §36B-3-111. Tort and contract liability.
- §36B-3-112. Conveyance or encumbrance of common elements.
- §36B-3-113. Insurance.
- §36B-3-114. Surplus funds.
- §36B-3-115. Assessments for common expenses.
- §36B-3-116. Lien for assessments.
- §36B-3-117. Other liens.
- §36B-3-118. Association records.
- §36B-3-119. Association as trustee.

§36B-3-101. Organization of unit owners' association.

1 A unit owners' association must be organized no later
2 than the date the first unit in the common interest
3 community is conveyed. The membership of the association
4 at all times consists exclusively of all unit owners or,
5 following termination of the common interest community,
6 of all former unit owners entitled to distributions of
7 proceeds under section 2-118 or their heirs, successors, or
8 assigns. The association must be organized as a profit or
9 nonprofit corporation, trust, partnership, or as an
10 unincorporated association.

§36B-3-102. Powers of unit owners' association.

1 (a) Except as provided in subsection (b), and subject to
2 the provisions of the declaration, the association, even if
3 unincorporated, may:

- 4 (1) Adopt and amend bylaws and rules and regulations;
- 5 (2) Adopt and amend budgets for revenues,
6 expenditures, and reserves and collect assessments for
7 common expenses from unit owners;
- 8 (3) Hire and discharge managing agents and other
9 employees, agents, and independent contractors;
- 10 (4) Institute, defend, or intervene in litigation or
11 administrative proceedings in its own name on behalf of
12 itself or two or more unit owners on matters affecting the
13 common interest community;
- 14 (5) Make contracts and incur liabilities;
- 15 (6) Regulate the use, maintenance, repair, replacement,
16 and modification of common elements;
- 17 (7) Cause additional improvements to be made as a part
18 of the common elements;
- 19 (8) Acquire, hold, encumber, and convey in its own
20 name any right, title, or interest to real estate or personal
21 property, but (i) common elements in a condominium or
22 planned community may be conveyed or subjected to a
23 security interest only pursuant to section 3-112 and (ii) part
24 of a cooperative may be conveyed, or all or part of a
25 cooperative may be subjected to a security interest, only
26 pursuant to section 3-112;
- 27 (9) Grant easements, leases, licenses, and concessions
28 through or over the common elements;
- 29 (10) Impose and receive any payments, fees, or charges
30 for the use, rental, or operation of the common elements,
31 other than limited common elements described in sections
32 2-102(2) and (4), and for services provided to unit owners;
- 33 (11) Impose charges for late payment of assessments
34 and, after notice and an opportunity to be heard, levy
35 reasonable fines for violations of the declaration, bylaws,
36 rules, and regulations of the association;
- 37 (12) Impose reasonable charges for the preparation and
38 recordation of amendments to the declaration, resale
39 certificates required by section 4-109, or statements of
40 unpaid assessments;
- 41 (13) Provide for the indemnification of its officers and
42 executive board and maintain directors' and officers'
43 liability insurance;
- 44 (14) Assign its right to future income, including the
45 right to receive common expense assessments, but only to

- 46 the extent the declaration expressly so provides;
47 (15) Exercise any other powers conferred by the
48 declaration or bylaws;
49 (16) Exercise all other powers that may be exercised in
50 this state by legal entities of the same type as the
51 association; and
52 (17) Exercise any other powers necessary and proper for
53 the governance and operation of the association.
54 (b) The declaration may not impose limitations on the
55 power of the association to deal with the declarant which
56 are more restrictive than the limitations imposed on the
57 power of the association to deal with other persons.

§36B-3-103. Executive board members and officers.

- 1 (a) Except as provided in the declaration, the bylaws,
2 subsection (b), or other provisions of this chapter, the
3 executive board may act in all instances on behalf of the
4 association. In the performance of their duties, the officers
5 and members of the executive board are required to
6 exercise (i) if appointed by the declarant, the care required
7 of fiduciaries of the unit owners and (ii) if elected by the unit
8 owners, ordinary and reasonable care.
9 (b) The executive board may not act on behalf of the
10 association to amend the declaration (section 2-117), to
11 terminate the common interest community (section 2-118)
12 or to elect members of the executive board or determine the
13 qualifications, powers and duties, or terms of office of
14 executive board members (section 3-103(f)), but the
15 executive board may fill vacancies in its membership for the
16 unexpired portion of any term.
17 (c) Within thirty days after adoption of any proposed
18 budget for the common interest community, the executive
19 board shall provide a summary of the budget to all the unit
20 owners, and shall set a date for a meeting of the unit owners
21 to consider ratification of the budget not less than fourteen
22 nor more than thirty days after mailing of the summary.
23 Unless at that meeting a majority of all unit owners or any
24 larger vote specified in the declaration reject the budget,
25 the budget is ratified, whether or not a quorum is present. In
26 the event the proposed budget is rejected, the periodic
27 budget last ratified by the unit owners must be continued
28 until such time as the unit owners ratify a subsequent

29 budget proposed by the executive board.

30 (d) Subject to subsection (e), the declaration may
31 provide for a period of declarant control of the association,
32 during which a declarant, or persons designated by him,
33 may appoint and remove the officers and members of the
34 executive board. Regardless of the period provided in the
35 declaration, a period of declarant control terminates no
36 later than the earlier of: (i) Sixty days after conveyance of
37 seventy-five percent of the units that may be created to unit
38 owners other than a declarant; (ii) two years after all
39 declarants have ceased to offer units for sale in the ordinary
40 course of business; or (iii) two years after any right to add
41 new units was last exercised. A declarant may voluntarily
42 surrender the right to appoint and remove officers and
43 members of the executive board before termination of that
44 period, but in that event the declarant may require, for the
45 duration of the period of declarant control, that specified
46 actions of the association or executive board, as described
47 in a recorded instrument executed by the declarant, be
48 approved by the declarant before they become effective.

49 (e) Not later than sixty days after conveyance of twenty-
50 five percent of the units that may be created to unit owners
51 other than a declarant, at least one member and not less
52 than twenty-five percent of the members of the executive
53 board must be elected by unit owners other than the
54 declarant. Not later than sixty days after conveyance of
55 fifty percent of the units that may be created to unit owners
56 other than a declarant, not less than thirty-three and one-
57 third percent of the members of the executive board must be
58 elected by unit owners other than the declarant.

59 (f) Except as otherwise provided in section 2-120(e), not
60 later than the termination of any period of declarant
61 control, the unit owners shall elect an executive board of at
62 least three members, at least a majority of whom must be
63 unit owners. The executive board shall elect the officers.
64 The executive board members and officers shall take office
65 upon election.

66 (g) Notwithstanding any provision of the declaration or
67 bylaws to the contrary, the unit owners, by a two-thirds
68 vote of all persons present and entitled to vote at any
69 meeting of the unit owners at which a quorum is present,
70 may remove any member of the executive board with or

71 without cause, other than a member appointed by the
72 declarant.

§36B-3-104. Transfer of special declarant rights.

1 (a) A special declarant right (section 1-103(29)) created
2 or reserved under this chapter may be transferred only by
3 an instrument evidencing the transfer recorded in every
4 county in which any portion of the common interest
5 community is located. The instrument is not effective unless
6 executed by the transferee.

7 (b) Upon transfer of any special declarant right, the
8 liability of a transfer or declarant is as follows:

9 (1) A transferor is not relieved of any obligation or
10 liability arising before the transfer and remains liable for
11 warranty obligations imposed upon him by this chapter.
12 Lack of privity does not deprive any unit owner of standing
13 to maintain an action to enforce any obligation of the
14 transferor.

15 (2) If a successor to any special declarant right is an
16 affiliate of a declarant (section 1-103(1)), the transferor is
17 jointly and severally liable with the successor for any
18 obligations or liabilities of the successor relating to the
19 common interest community.

20 (3) If a transferor retains any special declarant rights,
21 but transfers other special declarant rights to a successor
22 who is not an affiliate of the declarant, the transferor is
23 liable for any obligations or liabilities imposed on a
24 declarant by this chapter or by the declaration relating to
25 the retained special declarant rights and arising after the
26 transfer.

27 (4) A transferor has no liability for any act or omission
28 or any breach of a contractual or warranty obligation
29 arising from the exercise of a special declarant right by a
30 successor declarant who is not an affiliate of the transferor.

31 (c) Unless otherwise provided in a mortgage
32 instrument, deed of trust, or other agreement creating a
33 security interest, in case of foreclosure of a security interest,
34 sale by a trustee under an agreement creating a security
35 interest, tax sale, judicial sale, or sale under bankruptcy
36 code or receivership proceedings, of any units owned by a
37 declarant or real estate in a common interest community
38 subject to development rights, a person acquiring title to all

39 the property being foreclosed or sold, but only upon his
40 request, succeeds to all special declarant rights related to
41 that property held by that declarant, or only to any rights
42 reserved in the declaration pursuant to section 2-115 and
43 held by that declarant to maintain models, sales offices, and
44 signs. The judgment or instrument conveying title must
45 provide for transfer of only the special declarant rights
46 requested.

47 (d) Upon foreclosure of a security interest, sale by a
48 trustee under an agreement creating a security interest, tax
49 sale, judicial sale, or sale under bankruptcy code or
50 receivership proceedings, of all interests in a common
51 interest community owned by a declarant:

52 (1) The declarant ceases to have any special declarant
53 rights, and

54 (2) The period of declarant control (section 3-103(d))
55 terminates unless the judgment or instrument conveying
56 title provides for transfer of all special declarant rights held
57 by that declarant to a successor declarant.

58 (e) The liabilities and obligations of a person who
59 succeeds to special declarant rights are as follows:

60 (1) A successor to any special declarant right who is an
61 affiliate of a declarant is subject to all obligations and
62 liabilities imposed on the transferor by this chapter or by
63 the declaration.

64 (2) A successor to any special declarant right, other than
65 a successor described in paragraph (3) or (4) of a successor
66 who is an affiliate of a declarant, is subject to the
67 obligations and liabilities imposed by this chapter or the
68 declaration:

69 (i) On a declarant which relates to the successor's
70 exercise or nonexercise of special declarant rights; or

71 (ii) On his transferor, other than:

72 (A) Misrepresentation by any previous declarant;

73 (B) Warranty obligations on improvements made by any
74 previous declarant, or made before the common interest
75 community was created;

76 (C) Breach of any fiduciary obligation by any previous
77 declarant or his appointees to the executive board; or

78 (D) Any liability or obligation imposed on the
79 transferor as a result of the transferor's acts or omissions
80 after the transfer.

81 (3) A successor to only a right reserved in the
82 declaration to maintain models, sales offices, and signs
83 (section 2-115), may not exercise any other special
84 declarant right, and is not subject to any liability or
85 obligation as a declarant, except the obligation to provide a
86 public offering statement and any liability arising as a
87 result thereof.

88 (4) A successor to all special declarant rights held by a
89 transferor who succeeded to those rights pursuant to a deed
90 or other instrument of conveyance in lieu of foreclosure or a
91 judgment or instrument conveying title under subsection
92 (c), may declare in a recorded instrument the intention to
93 hold those rights solely for transfer to another person.
94 Thereafter, until transferring all special declarant rights to
95 any person acquiring title to any unit or real estate subject
96 to development rights owned by the successor, or until
97 recording an instrument permitting exercise of all those
98 rights, that successor may not exercise any of those rights
99 other than any right held by his transferor to control the
100 executive board in accordance with section 3-103(d) for the
101 duration of any period of declarant control, and any
102 attempted exercise of those rights is void. So long as a
103 successor declarant may not exercise special declarant
104 rights under this subsection, the successor declarant is not
105 subject to any liability or obligation as a declarant other
106 than liability for his acts and omissions under section
107 3-103(d).

108 (f) Nothing in this section subjects any successor to a
109 special declarant right to any claims against or other
110 obligations of a transferor declarant other than claims and
111 obligations arising under this chapter or the declaration.

§36B-3-105. Termination of contracts and leases of declarant.

1 If entered into before the executive board elected by the
2 unit owners pursuant to section 3-103(f) takes office, (i) any
3 management contract, employment contract, or lease of
4 recreational or parking areas or facilities, (ii) any other
5 contract or lease between the association and a declarant or
6 an affiliate of a declarant, or (iii) any contract or lease that
7 is not bona fide or was unconscionable to the unit owners at
8 the time entered into under the circumstances then
9 prevailing, may be terminated without penalty by the

10 association at any time after the executive board elected by
11 the unit owners pursuant to section 3-103(f) takes office
12 upon not less than ninety days' notice to the other party.
13 This section does not apply to: (i) Any lease the termination
14 of which would terminate the common interest community
15 or reduce its size, unless the real estate subject to that lease
16 was included in the common interest community for the
17 purpose of avoiding the right of the association to terminate
18 a lease under this section, or (ii) a proprietary lease.

§36B-3-106. Bylaws.

- 1 (a) The bylaws of the association must provide:
 - 2 (1) The number of members of the executive board and
3 the titles of the officers of the association;
 - 4 (2) Election by the executive board of president,
5 treasurer, secretary, and any other officers of the
6 association the bylaws specify;
 - 7 (3) The qualifications, powers and duties, terms of
8 office, and manner of electing and removing executive
9 board members and officers and filling vacancies;
 - 10 (4) Which, if any, of its powers the executive board or
11 officers may delegate to other persons or to a managing
12 agent;
 - 13 (5) Which of its officers may prepare, execute, certify,
14 and record amendments to the declaration on behalf of the
15 association; and
 - 16 (6) A method for amending the bylaws.
- 17 (b) Subject to the provisions of the declaration, the
18 bylaws may provide for any other matters the association
19 deems necessary and appropriate.

§36B-3-107. Upkeep of common interest community.

- 1 (a) Except to the extent provided by the declaration,
2 subsection (b), or section 3-113(h), the association is
3 responsible for maintenance, repair, and replacement of the
4 common elements, and each unit owner is responsible for
5 maintenance, repair, and replacement of his unit. Each unit
6 owner shall afford to the association and the other unit
7 owners, and to their agents or employees, access through his
8 unit reasonably necessary for those purposes. If damage is
9 inflicted on the common elements or on any unit through
10 which access is taken, the unit power responsible for the

11 damage, or the association if it is responsible, is liable for
12 the prompt repair thereof.

13 (b) In addition to the liability that a declarant as a unit
14 owner has under this chapter, the declarant alone is liable
15 for all expenses in connection with real estate subject to the
16 development rights. No other unit owner and no other
17 portion of the common interest community is subject to a
18 claim for payment of those expenses. Unless the declaration
19 provides otherwise, any income or proceeds from real estate
20 subject to development rights inures to the declarant.

21 (c) In a planned community, if all development rights
22 have expired with respect to any real estate, the declarant
23 remains liable for all expenses of that real estate unless,
24 upon expiration, the declaration provides that the real
25 estate becomes common elements or units.

§36B-3-108. Meetings.

1 A meeting of the association must be held at least once
2 each year. Special meetings of the association may be called
3 by the president, a majority of the executive board, or by
4 unit owners having twenty percent, or any lower percentage
5 specified in the bylaws, of the votes in the association. Not
6 less than ten nor more than sixty days in advance of any
7 meeting, the secretary or other officer specified in the
8 bylaws shall cause notice to be hand delivered or sent
9 prepaid by United States mail to the mailing address of
10 each unit or to any other mailing address designated in
11 writing by the unit owner. The notice of any meeting must
12 state the time and place of the meeting and the items on the
13 agenda, including the general nature of any proposed
14 amendment to the declaration or bylaws, any budget
15 changes, and any proposal to remove an officer or member
16 of the executive board.

§36B-3-109. Quorums.

1 (a) Unless the bylaws provide otherwise, a quorum is
2 present throughout any meeting of the association if
3 persons entitled to cast twenty percent of the votes that may
4 be cast for election of the executive board are present in
5 person or by proxy at the beginning of the meeting.

6 (b) Unless the bylaws specify a larger percentage, a
7 quorum is deemed present throughout any meeting of the

8 executive board if persons entitled to cast fifty percent of
9 the votes on that board are present at the beginning of the
10 meeting.

§36B-3-110. Voting; proxies.

1 (a) If only one of several owners of a unit is present at a
2 meeting of the association, that owner is entitled to cast all
3 the votes allocated to that unit. If more than one of the
4 owners are present, the votes allocated to that unit may be
5 cast only in accordance with the agreement of a majority in
6 interest of the owners, unless the declaration expressly
7 provides otherwise. There is majority agreement if any one
8 of the owners casts the votes allocated to that unit without
9 protest being made promptly to the person presiding over
10 the meeting by any of the other owners of the unit.

11 (b) Votes allocated to a unit may be cast pursuant to a
12 proxy duly executed by a unit owner. If a unit is owned by
13 more than one person, each owner of the unit may vote or
14 register protest to the casting of votes by the other owners of
15 the unit through a duly executed proxy. A unit owner may
16 revoke a proxy given pursuant to this section only by actual
17 notice of revocation to the person presiding over a meeting
18 of the association. A proxy is void if it is not dated or
19 purports to be revocable without notice. A proxy terminates
20 one year after its date, unless it specifies a shorter term.

21 (c) If the declaration requires that votes on specified
22 matters affecting the common interest community be cast
23 by lessees rather than unit owners of leased units: (i) The
24 provisions of subsections (a) and (b) apply to lessees as if
25 they were unit owners; (ii) unit owners who have leased
26 their units to other persons may not cast votes on those
27 specified matters; and (iii) lessees are entitled to notice of
28 meetings, access to records, and other rights respecting
29 these matters as if they were unit owners. Unit owners must
30 also be given notice, in the manner provided in section
31 3-108, of all meetings at which lessees are entitled to vote.

32 (d) No votes allocated to a unit owned by the association
33 may be cast.

§36B-3-111. Tort and contract liability.

1 Neither the association nor any unit owner except the

2 declarant is liable for that declarant's torts in connection
3 with any part of the common interest community which
4 that declarant has the responsibility to maintain.
5 Otherwise, an action alleging a wrong done by the
6 association must be brought against the association and not
7 against any unit owner. If the wrong occurred during any
8 period of declarant control and the association gives the
9 declarant reasonable notice of and an opportunity to defend
10 against the action, the declarant who then controlled the
11 association is liable to the association or to any unit owner
12 for (i) all tort losses not covered by insurance suffered by the
13 association or that unit owner, and (ii) all costs that the
14 association would not have incurred but for a breach of
15 contract or other wrongful act or omission. Whenever the
16 declarant is liable to the association under this section, the
17 declarant is also liable for all expenses of litigation,
18 including reasonable attorney's fees, incurred by the
19 association. Any statute of limitation affecting the
20 association's right of action under this section is tolled until
21 the period of declarant control terminates. A unit owner is
22 not precluded from maintaining an action contemplated by
23 this section because he is a unit owner or a member or
24 officer of the association. Liens resulting from judgments
25 against the association are governed by section 3-117
26 (Other Liens).

§36B-3-112. Conveyance or encumbrance of common elements.

1 (a) In a condominium or planned community, portions
2 of the common elements may be conveyed or subjected to a
3 security interest by the association if persons entitled to
4 cast at least eighty percent of the votes in the association,
5 including eighty percent of the votes allocated to units not
6 owned by a declarant, or any larger percentage the
7 declaration specifies, agree to that action; but all owners of
8 units to which any limited common element is allocated
9 must agree in order to convey that limited common element
10 or subject it to a security interest. The declaration may
11 specify a smaller percentage only if all of the units are
12 restricted exclusively to nonresidential uses. Proceeds of
13 the sale are an asset of the association.

14 (b) Part of a cooperative may be conveyed and all or part

15 of a cooperative may be subjected to a security interest by
16 the association if persons entitled to cast at least eighty
17 percent of the votes in the association, including eighty
18 percent of the votes allocated to units not owned by a
19 declarant, or any larger percentage the declaration
20 specified, agree to that action; but, if fewer than all of the
21 units or limited common elements are to be conveyed or
22 subjected to a security interest, then all unit owners of those
23 units, or the units to which those limited common elements
24 are allocated, must agree in order to convey those units or
25 limited common elements or subject them to a security
26 interest. The declaration may specify a smaller percentage
27 only if all of the units are restricted exclusively to
28 nonresidential uses. Proceeds of the sale are an asset of the
29 association. Any purported conveyance or other voluntary
30 transfer of an entire cooperative, unless made pursuant to
31 section 2-118, is void.

32 (c) An agreement to convey common elements in a
33 condominium or planned community, or to subject them to
34 a security interest, or in a cooperative, an agreement to
35 convey any part of a cooperative or subject it to a security
36 interest, must be evidenced by the execution of an
37 agreement, or ratifications thereof, in the same manner as a
38 deed, by the requisite number of unit owners. The
39 agreement must specify a date after which the agreement
40 will be void unless recorded before that date. The
41 agreement and all ratifications thereof must be recorded in
42 every county in which a portion of the common interest
43 community is situated, and is effective only upon
44 recordation.

45 (d) The association, on behalf of the unit owners, may
46 contract to convey an interest in a common interest
47 community pursuant to subsection (a), but the contract is
48 not enforceable against the association until approved
49 pursuant to subsections (a), (b) and (c). Thereafter, the
50 association has all powers necessary and appropriate to
51 effect the conveyance or encumbrance, including the power
52 to execute deeds or other instruments.

53 (e) Unless made pursuant to this section, any purported
54 conveyance, encumbrance, judicial sale, or other voluntary
55 transfer of common elements or of any other part of a
56 cooperative is void.

57 (f) A conveyance or encumbrance of common elements
58 or of a cooperative pursuant to this section does not deprive
59 any unit of its rights of access and support.

60 (g) Unless the declaration otherwise provides, a
61 conveyance or encumbrance of common elements pursuant
62 to this section does not affect the priority or validity of
63 preexisting encumbrances.

64 (h) In a cooperative, the association may acquire, hold,
65 encumber, or convey a proprietary lease without complying
66 with this section.

§36B-3-113. Insurance.

1 (a) Commencing not later than the time of the first
2 conveyance of a unit to a person other than a declarant, the
3 association shall maintain, to the extent reasonably
4 available:

5 (1) Property insurance on the common elements and, in
6 a planned community, also on property that must become
7 common elements, insuring against all risks of direct
8 physical loss commonly insured against or, in the case of a
9 conversion building, against fire and extended coverage
10 perils. The total amount of insurance after application of
11 any deductibles must be not less than eighty percent of the
12 actual cash value of the insured property at the time the
13 insurance is purchased and at each renewal date, exclusive
14 of land, excavations, foundations, and other items normally
15 excluded from property policies; and

16 (2) Liability insurance, including medical payments
17 insurance, in an amount determined by the executive board
18 but not less than any amount specified in the declaration,
19 covering all occurrences commonly insured against for
20 death, bodily injury, and property damage arising out of or
21 in connection with the use, ownership, or maintenance of
22 the common elements and, in cooperatives, also of all units.

23 (b) In the case of a building that is part of a cooperative
24 or that contains units having horizontal boundaries
25 described in the declaration, the insurance maintained
26 under subsection (a)(1), to the extent reasonably available,
27 must include the units, but need not include improvements
28 and betterments installed by unit owners.

29 (c) If the insurance described in subsections (a) and (b) is
30 not reasonably available, the association promptly shall

31 cause notice of that fact to be hand delivered or sent prepaid
32 by United States mail to all unit owners. The declaration
33 may require the association to carry any other insurance,
34 and the association in any event may carry any other
35 insurance it considers appropriate to protect the
36 association or the unit owners.

37 (d) Insurance policies carried pursuant to subsections
38 (a) and (b) must provide that:

39 (1) Each unit owner is an insured person under the
40 policy with respect to liability arising out of his interest in
41 the common elements or membership in the association;

42 (2) The insurer waives its right to subrogation under the
43 policy against any unit owner or member of his household;

44 (3) No act or omission by any unit owner, unless acting
45 within the scope of his authority on behalf of the
46 association, will void the policy or be a condition to
47 recovery under the policy; and

48 (4) If, at the time of a loss under the policy, there is other
49 insurance in the name of a unit owner covering the same
50 risk covered by the policy, the association's policy provides
51 primary insurance.

52 (e) Any loss covered by the property policy under
53 subsections (a)(1) and (b) must be adjusted with the
54 association, but the insurance proceeds for that loss are
55 payable to any insurance trustee designated for that
56 purpose, or otherwise to the association, and not to any
57 holder of a security interest. The insurance trustee or the
58 association shall hold any insurance proceeds in trust for
59 the association, unit owners, and lien holders as their
60 interests may appear. Subject to the provisions of
61 subsection (h), the proceeds must be disbursed first for the
62 repair or restoration of the damaged property, and the
63 association, unit owners, and lien holders are not entitled to
64 receive payment of any portion of the proceeds unless there
65 is a surplus of proceeds after the property has been
66 completely repaired or restored, or the common interest
67 community is terminated.

68 (f) An insurance policy issued to the association does
69 not prevent a unit owner from obtaining insurance for his
70 own benefit.

71 (g) An insurer that has issued an insurance policy under
72 this section shall issue certificates or memoranda of

73 insurance to the association and, upon written request, to
74 any unit owner or holder of a security interest. The insurer
75 issuing the policy may not cancel or refuse to renew it until
76 thirty days after notice of the proposed cancellation or
77 nonrenewal has been mailed to the association, each unit
78 owner and each holder of a security interest to whom a
79 certificate or memorandum of insurance has been issued at
80 their respective last known addresses.

81 (h) Any portion of the common interest community for
82 which insurance is required under this section which is
83 damaged or destroyed must be repaired or replaced
84 promptly by the association unless (i) the common interest
85 community is terminated, in which case section 2-118
86 applies (ii) repair or replacement would be illegal under any
87 state or local statute or ordinance governing health or
88 safety, or (iii) eighty percent of the unit owners, including
89 every owner of a unit or assigned limited common element
90 that will not be rebuilt, vote not to rebuild. The cost of
91 repair or replacement in excess of insurance proceeds and
92 reserves is a common expense. If the entire common interest
93 community is not repaired or replaced, (i) the insurance
94 proceeds attributable to the damaged common elements
95 must be used to restore the damaged area to a condition
96 compatible with the remainder of the common interest
97 community, and (ii) except to the extent that other persons
98 will be distributees (section 2-105(a)12(ii)), (A) the
99 insurance proceeds attributable to units limited common
100 elements that are not rebuilt must be distributed to the
101 owners of those units and the owners of the units to which
102 those limited common elements were allocated, or to lien
103 holders, as their interests may appear, and (B) the
104 remainder of the proceeds must be distributed to all the unit
105 owners or lien holders, as their interests may appear, as
106 follows: (1) In a condominium, in proportion to the common
107 element interests of all the units and (2) in a cooperative or
108 planned community, in proportion to the common expense
109 liabilities of all the units. If the unit owners vote not to
110 rebuild any unit, that unit's allocated interests are
111 automatically reallocated upon the vote as if the unit had
112 been condemned under section 1-107(a), and the
113 association promptly shall prepare, execute, and record an
114 amendment to the declaration reflecting the reallocations.

115 (i) The provisions of this section may be varied or
116 waived in the case of a common interest community all of
117 whose units are restricted to nonresidential use.

§36B-3-114. Surplus funds.

1 Unless otherwise provided in the declaration, any surplus
2 funds of the association remaining after payment of or
3 provision for common expenses and any prepayment of
4 reserves must be paid to the unit owners in proportion to
5 their common expense liabilities or credited to them to
6 reduce their future common expense assessments.

§36B-3-115. Assessments for common expenses.

1 (a) Until the association makes a common expense
2 assessment, the declarant shall pay all common expenses.
3 After an assessment has been made by the association,
4 assessments must be made at least annually, based on a
5 budget adopted at least annually by the association.

6 (b) Except for assessments under subsections (c), (d) and
7 (e), all common expenses must be assessed against all the
8 units in accordance with the allocations set forth in the
9 declaration pursuant to section 2-107(a) and (b). Any past
10 due common expense assessment or installment thereof
11 bears interest at the rate established by the association not
12 exceeding eighteen percent per year.

13 (c) To the extent required by the declaration:

14 (1) Any common expense associated with the
15 maintenance, repair or replacement of a limited common
16 element must be assessed against the units to which that
17 limited common element is assigned, equally, or in any
18 other proportion the declaration provides;

19 (2) Any common expense or portion thereof benefiting
20 fewer than all of the units must be assessed exclusively
21 against the units benefited; and

22 (3) The costs of insurance must be assessed in
23 proportion to risk and the costs of utilities must be assessed
24 in proportion to usage.

25 (d) Assessments to pay a judgment against the
26 association (section 3-117(a)) may be made only against the
27 units in the common interest community at the time the
28 judgment was entered, in proportion to their common
29 expense liabilities.

30 (e) If any common expense is caused by the misconduct
31 of any unit owner, the association may assess that expense
32 exclusively against his unit.

33 (f) If common expense liabilities are reallocated,
34 common expense assessments and any installment thereof
35 not yet due must be recalculated in accordance with the
36 reallocated common expense liabilities.

§36B-3-116. Lien for assessments.

1 (a) The association has a lien on a unit for any
2 assessment levied against that unit or fines imposed against
3 its unit owner from the time the assessment or fine becomes
4 due. Unless the declaration otherwise provides, fees,
5 charges, late charges, fines and interest charged pursuant to
6 section 3-102(a)(10), (11) and (12) are enforceable as
7 assessments under this section. If an assessment is payable
8 in installments, the full amount of the assessment is a lien
9 from the time the first installment thereof becomes due.

10 (b) A lien under this section is prior to all other liens and
11 encumbrances on a unit except (i) liens and encumbrances
12 recorded before the recordation of the declaration and, in a
13 cooperative, liens and encumbrances which the association
14 creates, assumes, or takes subject to, (ii) a first security
15 interest on the unit recorded before the date on which the
16 assessment sought to be enforced became delinquent, or, in
17 a cooperative, the first security interest encumbering only
18 the unit owner's interest and perfected before the date on
19 which the assessment sought to be enforced became
20 delinquent, and (iii) liens for real estate taxes and other
21 governmental assessments or charges against the unit or
22 cooperative. The lien is also prior to all security interests
23 described in clause (ii) above to the extent of the common
24 expense assessments based on the periodic budget adopted
25 by the association pursuant to section 3-115(a) which would
26 have become due in the absence of acceleration during the
27 six months immediately preceding institution of an action
28 to enforce the lien. This subsection does not affect the
29 priority of mechanics' or materialmen's liens, or the priority
30 of liens for other assessments made by the association. (The
31 lien under this section is not subject to the provisions of
32 (insert appropriate reference to state homestead, dower and
33 curtesy, or other exemptions).)

34 (c) Unless the declaration otherwise provides, if two or
35 more associations have liens for assessments created at any
36 time on the same property, those liens have equal priority.

37 (d) A lien for unpaid assessments is extinguished unless
38 proceedings to enforce the lien are instituted within three
39 years after the full amount of the assessments becomes due.

40 (e) This section does not prohibit actions to recover
41 sums for which subsection (a) creates a lien or prohibit an
42 association from taking a deed in lieu of foreclosure.

43 (f) A judgment or decree in any action brought under
44 this section must include costs and reasonable attorney's
45 fees for the prevailing party.

46 (g) The association upon written request shall furnish to
47 a unit owner a statement setting forth the amount of unpaid
48 assessments against the unit. If the unit owner's interest is
49 real estate, the statement must be in recordable form. The
50 statement must be furnished within ten business days after
51 receipt of the request and is binding on the association, the
52 executive board, and every unit owner.

53 (h) For the purpose of perfecting and preserving its lien,
54 the association shall give notice to the unit owner in the
55 manner set forth in section one (§56-2-1), article two,
56 chapter fifty-six of this code, or by registered or certified
57 mail, return receipt requested, and in a form reasonably
58 calculated to inform the owner of his liability for payment
59 of the assessment. The lien shall be discharged as to
60 subsequent purchasers for value without notice unless the
61 association shall cause to be recorded a notice of the lien in
62 the office of the clerk of the county commission of any
63 county wherein any part of the condominium is located. The
64 notice shall contain:

- 65 (1) A legally sufficient description of the unit;
- 66 (2) The name or names of the owners of the unit;
- 67 (3) The amount of unpaid assessments due together with
68 the date when each fell due; and
- 69 (4) The date of recordation.

70 The clerk of the county commission in whose office the
71 notice is recorded shall index the notice in the appropriate
72 deed books and lien books in the name of the unit owners
73 and of the association. The cost of recordation shall be
74 assessed against any unit owner found to be delinquent in a
75 subsequent proceeding to enforce the lien.

76 Upon payment of the assessment, the association shall
77 execute a written release of the lien in the manner set forth
78 in section one (§38-12-1), article twelve, chapter thirty-
79 eight of this code. This release shall be recorded, at the
80 expense of the association, in the office of the clerk of the
81 county commission wherein the notice of the lien was filed.

82 (i) At any time before the association has disposed of a
83 unit in a cooperative or entered into a contract for its
84 disposition under the power of sale, the unit owners or the
85 holder of any subordinate security interest may cure the
86 unit owner's default and prevent sale or other disposition
87 by tendering the performance due under the security
88 agreement, including any amounts due because of exercise
89 of a right to accelerate, plus the reasonable expenses of
90 proceeding to foreclosure incurred to the time of tender,
91 including reasonable attorney's fees of the creditor.

§36B-3-117. Other liens.

1 (a) In a condominium or planned community:

2 (1) Except as provided in paragraph (2), a judgment for
3 money against the association (if recorded) is not a lien on
4 the common elements, but is a lien in favor of the judgment
5 lien holder against all of the units in the common interest
6 community at the time the judgment was entered. No other
7 property of a unit owner is subject to the claims of creditors
8 of the association.

9 (2) If the association has granted a security interest in
10 the common elements to a creditor of the association
11 pursuant to section 3-112, the holder of that security
12 interest shall exercise its right against the common
13 elements before its judgment lien on any unit may be
14 enforced.

15 (3) Whether perfected before or after the creation of the
16 common interest community, if a lien, other than a deed of
17 trust or mortgage, including a judgment lien or lien
18 attributable to work performed or materials supplied
19 before creation of the common interest community,
20 becomes effective against two or more units, the unit owner
21 of an affected unit may pay to the lien holder the amount of
22 the lien attributable to his unit and the lien holder, upon
23 receipt of payment, promptly shall deliver a release of the
24 lien covering that unit. The amount of the payment must be

25 proportionate to the ratio which that unit owner's common
26 expense liability bears to the common expense liabilities of
27 all unit owners whose units are subject to the lien. After
28 payment, the association may not assess or have a lien
29 against that unit owner's unit for any portion of the
30 common expenses incurred in connection with that lien.

31 (4) A judgment against the association must be indexed
32 in the name of the common interest community and the
33 association and, when so indexed, is notice of the lien
34 against the units.

35 (b) In a cooperative:

36 (1) If the association receives notice of an impending
37 foreclosure on all or any portion of the association's real
38 estate, the association shall promptly transmit a copy of
39 that notice to each unit owner of a unit located within the
40 real estate to be foreclosed. Failure of the association to
41 transmit the notice does not affect the validity of the
42 foreclosure.

43 (2) Whether or not a unit owner's unit is subject to the
44 claims of the association's creditors, no other property of a
45 unit owner is subject to those claims.

§36B-3-118. Association records.

1 The association shall keep financial records sufficiently
2 detailed to enable the association to comply with section
3 4-109. All financial and other records must be made
4 reasonably available for examination by any unit owner
5 and his authorized agents.

§36B-3-119. Association as trustee.

1 With respect to a third person dealing with the
2 association in the association's capacity as a trustee, the
3 existence of trust powers and their proper exercise by the
4 association may be assumed without inquiry. A third
5 person is not bound to inquire whether the association has
6 power to act as trustee or is properly exercising trust
7 powers. A third person, without actual knowledge that the
8 association is exceeding or improperly exercising its
9 powers, is fully protected in dealing with the association as
10 if it possessed and properly exercised the powers it purports
11 to exercise. A third person is not bound to assure the proper
12 application of trust assets paid or delivered to the
13 association in its capacity as trustee.

ARTICLE 4. PROTECTION OF PURCHASERS.

- §36B-4-101. Applicability; waiver.
- §36B-4-102. Liability for public offering statement requirements.
- §36B-4-103. Public offering statement; general provisions.
- §36B-4-104. Same—Common interest communities subject to development rights.
- §36B-4-105. Same—Time shares.
- §36B-4-106. Same—Common interest communities containing conversion buildings.
- §36B-4-107. Same—Common interest community securities.
- §36B-4-108. Purchaser's right to cancel.
- §36B-4-109. Resales of units.
- §36B-4-110. Escrow of deposits.
- §36B-4-111. Release of liens.
- §36B-4-112. Conversion buildings.
- §36B-4-113. Express warranties of quality.
- §36B-4-114. Implied warranties of quality.
- §36B-4-115. Exclusion or modification of implied warranties of quality.
- §36B-4-116. Statute of limitations for warranties.
- §36B-4-117. Effect of violations on rights of action; attorney's fees.
- §36B-4-118. Labeling of promotional material.
- §36B-4-119. Declarant's obligation to complete and restore.
- §36B-4-120. Substantial completion of units.

§36B-4-101. Applicability; waiver.

- 1 (a) This article applies to all units subject to this chapter
- 2 except as provided in subsection (b) or as modified or
- 3 waived by agreement of purchasers of units in a common
- 4 interest community in which all units are restricted to
- 5 nonresidential use.
- 6 (b) Neither a public offering statement nor a resale
- 7 certificate need be prepared or delivered in the case of:
- 8 (1) A gratuitous disposition of a unit;
- 9 (2) A disposition pursuant to court order;
- 10 (3) A disposition by a government or governmental
- 11 agency;
- 12 (4) A disposition by foreclosure or deed in lieu of
- 13 foreclosure;
- 14 (5) A disposition to a dealer;
- 15 (6) A disposition that may be canceled at any time and
- 16 for any reason by the purchaser without penalty; or
- 17 (7) A disposition of a unit in a planned community in
- 18 which the declaration limits the maximum annual
- 19 assessment of any unit to not more than three hundred
- 20 dollars, as adjusted pursuant to section 1-114 (Adjust-
- 21 ment of dollar amounts) if:

- 22 (i) The declarant has a reasonable and good faith belief
23 that the maximum stated assessment will be sufficient to
24 pay the expenses of the planned community;
- 25 (ii) The declaration cannot be amended to increase the
26 assessment during the period of declarant control without
27 the consent of all unit owners; and
- 28 (iii) The planned community is not subject to any
29 development rights.

§36B-4-102. Liability for public offering statement requirements.

- 1 (a) Except as provided in subsection (b), a declarant,
2 before offering any interest in a unit to the public, shall
3 prepare a public offering statement conforming to the
4 requirements of sections 4-103, 4-104, 4-105 and 4-106.
- 5 (b) A declarant may transfer responsibility for
6 preparation of all or a part of the public offering statement
7 to a successor declarant (section 3-104) or to a dealer who
8 intends to offer units in the common interest community. In
9 the event of any such transfer, the transferor shall provide
10 the transferee with any information necessary to enable the
11 transferee to fulfill the requirements of subsection (a).
- 12 (c) Any declarant or dealer who offers a unit to a
13 purchaser shall deliver a public offering statement in the
14 manner prescribed in subsection 4-108(a). The person who
15 prepared all or a part of the public offering statement is
16 liable under sections 4-108 and 4-117 for any false or
17 misleading statement set forth therein or for any omission
18 of a material fact therefrom with respect to that portion of
19 the public offering statement which he prepared. If a
20 declarant did not prepare any part of a public offering
21 statement that he delivers, he is not liable for any false or
22 misleading statement set forth therein or for any omission
23 of a material fact therefrom unless he had actual knowledge
24 of the statement or omission or, in the exercise of reasonable
25 care, should have known of the statement or omission.
- 26 (d) If a unit is part of a common interest community and
27 is part of any other real estate regime in connection with the
28 sale of which the delivery of a public offering statement is
29 required under the laws of this state, a single public offering
30 statement conforming to the requirements of sections
31 4-103, 4-104, 4-105 and 4-106 as those requirements relate

32 to each regime in which the unit is located, and to any other
33 requirements imposed under the laws of this state, may be
34 prepared and delivered in lieu of providing two or more
35 public offering statements.

§36B-4-103. Public offering statement; general provisions.

1 (a) Except as provided in subsection (b), a public
2 offering statement must contain or fully and accurately
3 disclose:

4 (1) The name and principal address of the declarant and
5 of the common interest community and a statement that the
6 common interest community is either a condominium,
7 cooperative or planned community;

8 (2) A general description of the common interest
9 community, including to the extent possible, the types,
10 number, and declarant's schedule of commencement and
11 completion of construction of buildings and amenities that
12 the declarant anticipates including in the common interest
13 community;

14 (3) The number of units in the common interest
15 community;

16 (4) Copies and a brief narrative description of the
17 significant features of the declaration, other than any plats
18 and plans and any other recorded covenants, conditions,
19 restrictions and reservations affecting the common interest
20 community; the bylaws and any rules or regulations of the
21 association; copies of any contracts and leases to be signed
22 by purchasers at closing and a brief narrative description of
23 any contracts or leases that will or may be subject to
24 cancellation by the association under section 3-105;

25 (5) Any current balance sheet and a projected budget for
26 the association, either within or as an exhibit to the public
27 offering statement, for one year after the date of the first
28 conveyance to a purchaser and thereafter the current
29 budget of the association, a statement of who prepared the
30 budget and a statement of the budget's assumptions
31 concerning occupancy and inflation factors. The budget
32 must include, without limitation:

33 (i) A statement of the amount or a statement that there is
34 no amount included in the budget as a reserve for repairs
35 and replacement;

36 (ii) A statement of any other reserves;

- 37 (iii) The projected common expense assessment by
38 category of expenditures for the association; and
39 (iv) The projected monthly common expense assessment
40 for each type of unit;
- 41 (6) Any services not reflected in the budget that the
42 declarant provides, or expenses that he pays and which he
43 expects may become at any subsequent time a common
44 expense of the association and the projected common
45 expense assessment attributable to each of those services or
46 expenses for the association and for each type of unit;
- 47 (7) Any initial or special fee due from the purchaser at
48 closing, together with a description of the purpose and
49 method of calculating the fee;
- 50 (8) A description of any liens, defects, or encumbrances
51 on or affecting the title to the common interest community;
- 52 (9) A description of any financing offered or arranged
53 by the declarant;
- 54 (10) The terms and significant limitations of any
55 warranties provided by the declarant, including statutory
56 warranties and limitations on the enforcement thereof or on
57 damages;
- 58 (11) A statement that:
- 59 (i) Within fifteen days after receipt of a public offering
60 statement a purchaser, before conveyance, may cancel any
61 contract for purchase of a unit from a declarant;
- 62 (ii) If a declarant fails to provide a public offering
63 statement to a purchaser before conveying a unit, that
64 purchaser may recover from the declarant ten percent of the
65 sales price of the unit plus ten percent of the share,
66 proportionate to his common expense liability, of any
67 indebtedness of the association secured by security
68 interests encumbering the common interest community;
69 and
- 70 (iii) If a purchaser receives the public offering
71 statement more than fifteen days before signing a contract,
72 he cannot cancel the contract;
- 73 (12) A statement of any unsatisfied judgments or
74 pending suits against the association and the status of any
75 pending suits material to the common interest community,
76 of which a declarant has actual knowledge;
- 77 (13) A statement that any deposit made in connection
78 with the purchase of a unit will be held in an escrow account

79 until closing and will be returned to the purchaser if the
80 purchaser cancels the contract pursuant to section 4-108,
81 together with the name and address of the escrow agent;
82 (14) Any restraints on alienation of any portion of the
83 common interest community and any restrictions: (i) On
84 use, occupancy, and alienation of the units; and (ii) on the
85 amount for which a unit may be sold or on the amount that
86 may be received by a unit owner on sale, condemnation or
87 casualty loss to the unit or to the common interest
88 community or on termination of the common interest
89 community;
90 (15) A description of the insurance coverage provided
91 for the benefit of unit owners;
92 (16) Any current or expected fees or charges to be paid
93 by unit owners for the use of the common elements and
94 other facilities related to the common interest community;
95 (17) The extent to which financial arrangements have
96 been provided for completion of all improvements that the
97 declarant is obligated to build pursuant to section 4-119
98 (Declarant's obligation to complete and restore);
99 (18) A brief narrative description of any zoning and
100 other land use requirements affecting the common interest
101 community;
102 (19) All unusual and material circumstances, features
103 and characteristics of the common interest community and
104 the units; and
105 (20) In a cooperative, (i) whether the unit owners will be
106 entitled, for federal, state and local income tax purposes, to
107 a pass through of deductions for payments made by the
108 association for real estate taxes and interest paid the holder
109 of a security interest encumbering the cooperative; and (ii) a
110 statement as to the effect on every unit owner if the
111 association fails to pay real estate taxes or payments due the
112 holder of a security interest encumbering the cooperative.
113 (b) If a common interest community composed of not
114 more than twelve units is not subject to any development
115 rights and no power is reserved to a declarant to make the
116 common interest community part of a larger common
117 interest community, group of common interest
118 communities, or other real estate, a public offering
119 statement may but need not include the information
120 otherwise required by paragraphs (9), (10), (15), (16), (17),

121 (18) and (19) of subsection (a) and the narrative descriptions
122 of documents required by subsection (a)(4).

123 (c) A declarant promptly shall amend the public
124 offering statement to report any material change in the
125 information required by this section.

**§36B-4-104. Same—Common interest communities sub-
ject to development rights.**

1 If the declaration provides that a common interest
2 community is subject to any development rights, the public
3 offering statement must disclose, in addition to the
4 information required by section 4-103:

5 (1) The maximum number of units and the maximum
6 number of units per acre, that may be created;

7 (2) A statement of how many or what percentage of the
8 units that may be created will be restricted exclusively to
9 residential use or a statement that no representations are
10 made regarding use restrictions;

11 (3) If any of the units that may be built within real estate
12 subject to development rights are not to be restricted
13 exclusively to residential use, a statement, with respect to
14 each portion of that real estate, of the maximum percentage
15 of the real estate areas, and the maximum percentage of the
16 floor areas of all units that may be created therein, that are
17 not restricted exclusively to residential use;

18 (4) A brief narrative description of any development
19 rights reserved by a declarant and of any conditions
20 relating to or limitations upon the exercise of development
21 rights;

22 (5) A statement of the maximum extent to which each
23 unit's allocated interests may be changed by the exercise of
24 any development right described in paragraph (3);

25 (6) A statement of the extent to which any buildings or
26 other improvements that may be erected pursuant to any
27 development right in any part of the common interest
28 community will be compatible with existing buildings and
29 improvements in the common interest community in terms
30 of architectural style, quality of construction, and size, or a
31 statement that no assurances are made in those regards;

32 (7) General descriptions of all other improvements that
33 may be made and limited common elements that may be
34 created within any part of the common interest community

35 pursuant to any development right reserved by the
36 declarant, or a statement that no assurances are made in
37 that regard;

38 (8) A statement of any limitations as to the locations of
39 any building or other improvement that may be made
40 within any part of the common interest community
41 pursuant to any development right reserved by the
42 declarant, or a statement that no assurances are made in
43 that regard;

44 (9) A statement that any limited common elements
45 created pursuant to any development right reserved by the
46 declarant will be of the same general types and sizes as the
47 limited common elements within other parts of the common
48 interest community, or a statement of the types and sizes
49 planned, or a statement that no assurances are made in that
50 regard;

51 (10) A statement that the proportion of limited common
52 elements to units created pursuant to any development
53 right reserved by the declarant will be approximately equal
54 to the proportion existing within other parts of the common
55 interest community, or a statement of any other assurances
56 in that regard, or a statement that no assurances are made in
57 that regard;

58 (11) A statement that all restrictions in the declaration
59 affecting use, occupancy and alienation of units will apply
60 to any units created pursuant to any development right
61 reserved by the declarant, or a statement of any
62 differentiations that may be made as to those units, or a
63 statement that no assurances are made in that regard; and

64 (12) A statement of the extent to which any assurances
65 made pursuant to this section apply or do not apply in the
66 event that any development right is not exercised by the
67 declarant.

§36B-4-105. Same—Time shares.

1 If the declaration provides that ownership or occupancy
2 of any units, is or may be in time shares, the public offering
3 statement shall disclose, in addition to the information
4 required by section 4-103:

5 (1) The number and identity of units in which time
6 shares may be created;

7 (2) The total number of time shares that may be created;

8 (3) The minimum duration of any time shares that may
9 be created; and

10 (4) The extent to which the creation of time shares will
11 or may affect the enforceability of the association's lien for
12 assessments provided in section 3-116.

§36B-4-106. Same—Common interest communities containing conversion buildings.

1 (a) The public offering statement of a common interest
2 community containing any conversion building must
3 contain, in addition to the information required by section
4 4-103:

5 (1) A statement by the declarant, based on a report
6 prepared by an independent (registered) architect or
7 engineer, describing the present condition of all structural
8 components and mechanical and electrical installations
9 material to the use and enjoyment of the building;

10 (2) A statement by the declarant of the expected useful
11 life of each item reported on in paragraph (1) or a statement
12 that no representations are made in that regard; and

13 (3) A list of any outstanding notices of uncured
14 violations of building code or other municipal regulations,
15 together with the estimated cost of curing those violations.

16 (b) This section applies only to buildings containing
17 units that may be occupied for residential use.

§36B-4-107. Same—Common interest community securities.

1 If an interest in a common interest community is
2 currently registered with the Securities and Exchange
3 Commission of the United States, a declarant satisfies all
4 requirements relating to the preparation of a public
5 offering statement of this chapter if he delivers to the
6 purchaser a copy of the public offering statement filed with
7 the Securities and Exchange Commission.

§36B-4-108. Purchaser's right to cancel.

1 (a) A person required to deliver a public offering
2 statement pursuant to section 4-102(c) shall provide a
3 purchaser with a copy of the public offering statement and
4 all amendments thereto before conveyance of the unit, and
5 not later than the date of any contract of sale. Unless a
6 purchaser is given the public offering statement more than

7 fifteen days before execution of a contract for the purchase
8 of a unit, the purchaser, before conveyance, may cancel the
9 contract within fifteen days after first receiving the public
10 offering statement.

11 (b) If a purchaser elects to cancel a contract pursuant to
12 subsection (a), he may do so by hand delivering notice
13 thereof to the offeror or by mailing notice thereof by
14 prepaid United States mail to the offeror or to his agent for
15 service of process. Cancellation is without penalty, and all
16 payments made by the purchaser before cancellation must
17 be refunded promptly.

18 (c) If a person required to deliver a public offering
19 statement pursuant to section 4-102(c) fails to provide a
20 purchaser to whom a unit is conveyed with that public
21 offering statement and all amendments thereto as required
22 by subsection (a), the purchaser, in addition to any rights to
23 damages or other relief, is entitled to receive from that
24 person an amount equal to ten percent of the sale price of
25 the unit, plus ten percent of the share, proportionate to his
26 common expense liability, of any indebtedness of the
27 association secured by security interests encumbering the
28 common interest community.

§36B-4-109. Resales of units.

1 (a) Except in the case of a sale in which delivery of a
2 public offering statement is required, or unless exempt
3 under section 4-101(b), a unit owner shall furnish to a
4 purchaser before execution of any contract for sale of a unit,
5 or otherwise before conveyance, a copy of the declaration
6 (other than any plats and plans), the bylaws, the rules or
7 regulations of the association, and a certificate containing:
8 (1) A statement disclosing the effect on the proposed
9 disposition of any right of first refusal or other restraint on
10 the free alienability of the unit;

11 (2) A statement setting forth the amount of the monthly
12 common expense assessment and any unpaid common
13 expense or special assessment currently due and payable
14 from the selling unit owner;

15 (3) A statement of any other fees payable by unit
16 owners;

17 (4) A statement of any capital expenditures anticipated
18 by the association for the current and two next succeeding

19 fiscal years;

20 (5) A statement of the amount of any reserves for capital
21 expenditures and of any portions of those reserves
22 designated by the association for any specified projects;

23 (6) The most recent regularly prepared balance sheet
24 and income and expense statement, if any, of the
25 association;

26 (7) The current operating budget of the association;

27 (8) A statement of any unsatisfied judgments against
28 the association and the status of any pending suits in which
29 the association is a defendant;

30 (9) A statement describing any insurance coverage
31 provided for the benefit of unit owners;

32 (10) A statement as to whether the executive board has
33 knowledge that any alterations or improvements to the unit
34 or to the limited common elements assigned thereto violate
35 any provision of the declaration;

36 (11) A statement as to whether the executive board has
37 knowledge of any violations of the health or building codes
38 with respect to the unit, the limited common elements
39 assigned thereto, or any other portion of the common
40 interest community;

41 (12) A statement of the remaining term of any leasehold
42 estate affecting the common interest community and the
43 provisions governing any extension or renewal thereof;

44 (13) A statement of any restrictions in the declaration
45 affecting the amount that may be received by a unit owner
46 upon sale, condemnation, casualty loss to the unit or the
47 common interest community, or termination of the common
48 interest community; and

49 (14) In a cooperative, an accountant's statement, if any
50 was prepared, as to the deductibility for federal income tax
51 purposes by the unit owner of real estate taxes and interest
52 paid by the association.

53 (b) The association, within ten days after a request by a
54 unit owner, shall furnish a certificate containing the
55 information necessary to enable the unit owner to comply
56 with this section. A unit owner providing a certificate
57 pursuant to subsection (a) is not liable to the purchaser for
58 any erroneous information provided by the association and
59 included in the certificate.

60 (c) A purchaser is not liable for any unpaid assessment

61 or fee greater than the amount set forth in the certificate
62 prepared by the association. A unit owner is not liable to a
63 purchaser for the failure or delay of the association to
64 provide the certificate in a timely manner, but the purchase
65 contract is voidable by the purchaser until the certificate
66 has been provided and for five days thereafter or until
67 conveyance, whichever first occurs.

§36B-4-110. Escrow of deposits.

1 Any deposit made in connection with the purchase or
2 reservation of a unit from a person required to deliver a
3 public offering statement pursuant to section 4-102(c) must
4 be placed in escrow and held either in this state or in the
5 state where the unit is located in an account designated
6 solely for that purpose by an institution whose accounts are
7 insured by a governmental agency or instrumentality until
8 (i) delivered to the declarant at closing; (ii) delivered to the
9 declarant because of the purchaser's default under a
10 contract to purchase the unit; or (iii) refunded to the
11 purchaser.

§36B-4-111. Release of liens.

1 (a) In the case of a sale of a unit where delivery of a
2 public offering statement is required pursuant to section
3 4-102(c), a seller:
4 (1) Before conveying a unit, shall record or furnish to
5 the purchaser releases of all liens, except liens on real estate
6 that a declarant has the right to withdraw from the common
7 interest community, that the purchaser does not expressly
8 agree to take subject to or assume and that encumber:
9 (i) In a condominium, that unit and its common element
10 interest; and
11 (ii) In a cooperative or planned community, that unit
12 and any limited common elements assigned thereto, or
13 (2) Shall provide a surety bond or substitute collateral
14 for or insurance against the lien.
15 (b) Before conveying real estate to the association, the
16 declarant shall have that real estate released from: (1) All
17 liens the foreclosure of which would deprive unit owners of
18 any right of access to or easement of support of their units,
19 and (2) all other liens on that real estate unless the public
20 offering statement describes certain real estate that may be

21 conveyed subject to liens in specified amounts.

§36B-4-112. Conversion buildings.

1 (a) A declarant of a common interest community
2 containing conversion buildings, and any dealer who
3 intends to offer units in such a common interest community,
4 shall give each of the residential tenants and any residential
5 subtenant in possession of a portion of a conversion
6 building notice of the conversion and provide those persons
7 with the public offering statement no later than one
8 hundred twenty days before the tenants and any subtenant
9 in possession are required to vacate. The notice must set
10 forth generally the rights of tenants and subtenants under
11 this section and must be hand delivered to the unit or mailed
12 by prepaid United States mail to the tenant and subtenant
13 at the address of the unit or any other mailing address
14 provided by a tenant. No tenant or subtenant may be
15 required to vacate upon less than one hundred twenty days'
16 notice, except by reason of nonpayment of rent, waste, or
17 conduct that disturbs other tenants' peaceful enjoyment of
18 the premises, and the terms of the tenancy may not be
19 altered during that period. Failure to give notice as required
20 by this section is a defense to an action for possession.

21 (b) For sixty days after delivery or mailing of the notice
22 described in subsection (a), the person required to give the
23 notice shall offer to convey each unit or proposed unit
24 occupied for residential use to the tenant who leases that
25 unit. If a tenant fails to purchase the unit during that sixty
26 day period, the offeror may not offer to dispose of an
27 interest in that unit during the following one hundred
28 eighty days at a price or on terms more favorable to the
29 offeree than the price or terms offered to the tenant. This
30 subsection does not apply to any unit in a conversion
31 building if that unit will be restricted exclusively to
32 nonresidential use or the boundaries of the converted unit
33 do not substantially conform to the dimensions of the
34 residential unit before conversion.

35 (c) If a seller, in violation of subsection (b), conveys a
36 unit to a purchaser for value who has no knowledge of the
37 violation, the recordation of the deed conveying the unit or,
38 in a cooperative, the conveyance of the unit, extinguishes
39 any right a tenant may have under subsection (b) to

40 purchase that unit if the deed states that the seller has
41 complied with subsection (b), but the conveyances does not
42 affect the right of a tenant to recover damages from the
43 seller for a violation of subsection (b).

44 (d) Nothing in this section permits termination of a
45 lease by a declarant in violation of its terms.

§36B-4-113. Express warranties of quality.

1 (a) Express warranties made by any seller to a
2 purchaser of a unit, if relied upon by the purchaser, are
3 created as follows:

4 (1) Any affirmation of fact or promise which relates to
5 the unit, its use, or rights appurtenant thereto, area
6 improvements to the common interest community that
7 would directly benefit the unit, or the right to use or have
8 the benefit of facilities not located in the common interest
9 community, creates an express warranty that the unit and
10 related rights and uses will conform to the affirmation or
11 promise;

12 (2) Any model or description of the physical
13 characteristics of the common interest community,
14 including plans and specifications of or for improvements,
15 creates an express warranty that the common interest
16 community will conform to the model or description;

17 (3) Any description of the quantity or extent of the real
18 estate comprising the common interest community,
19 including plats or surveys, creates an express warranty that
20 the common interest community will conform to the
21 description, subject to customary tolerances; and

22 (4) A provision that a purchaser may put a unit only to a
23 specified use is an express warranty that the specified use is
24 lawful.

25 (b) Neither formal words, such as "warranty" or
26 "guarantee," nor a specific intention to make a warranty,
27 are necessary to create an express warranty of quality, but a
28 statement purporting to be merely an opinion or
29 commendation of the real estate or its value does not create
30 a warranty.

31 (c) Any conveyance of a unit transfers to the purchaser
32 all express warranties of quality made by previous sellers.

§36B-4-114. Implied warranties of quality.

1 (a) A declarant and any dealer warrants that a unit will

2 be in at least as good condition at the earlier of the time of
3 the conveyance or delivery of possession as it was at the
4 time of contracting, reasonable wear and tear expected.

5 (b) A declarant and any dealer impliedly warrants that
6 a unit and the common elements in the common interest
7 community are suitable for the ordinary uses of real estate
8 of its type and that any improvements made or contracted
9 for by him, or made by any person before the creation of the
10 common interest community, will be:

11 (1) Free from defective materials; and

12 (2) Constructed in accordance with applicable law,
13 according to sound engineering and construction
14 standards, and in a workmanlike manner.

15 (c) In addition, a declarant and any dealer warrants to a
16 purchaser of a unit that may be used for residential use that
17 an existing use, continuation of which is contemplated by
18 the parties, does not violate applicable law at the earlier of
19 the time of conveyance or delivery of possession.

20 (d) Warranties imposed by this section may be excluded
21 or modified as specified in section 4-115.

22 (e) For purposes of this section, improvements made or
23 contracted for by an affiliate of a declarant, section
24 1-103(1), are made or contracted for by the declarant.

25 (f) Any conveyance of a unit transfers to the purchaser
26 all of the declarant's implied warranties of quality.

**§36B-4-115. Exclusion or modification of implied warranties
of quality.**

1 (a) Except as limited by subsection (b) with respect to a
2 purchaser of a unit that may be used for residential use,
3 implied warranties of quality:

4 (1) May be excluded or modified by agreement of the
5 parties; and

6 (2) Are excluded by expression of disclaimer, such as
7 "as is," "with all faults" or other language that in common
8 understanding calls the purchaser's attention to the
9 exclusion of warranties.

10 (b) With respect to a purchaser of a unit that may be
11 occupied for residential use, no general disclaimer of
12 implied warranties of quality is effective, but a declarant
13 and any dealer may disclaim liability in an instrument
14 signed by the purchaser for a specified defect or specified

15 failure to comply with applicable law, if the defect or
16 failure entered into and became a part of the basis of the
17 bargain.

§36B-4-116. Statute of limitations for warranties.

1 (a) A judicial proceeding for breach of any obligation
2 arising under section 4-113 or 4-114 must be commenced
3 within six years after the cause of action accrues, but the
4 parties may agree to reduce the period of limitation to not
5 less than two years. With respect to a unit that may be
6 occupied for residential use, an agreement to reduce the
7 period of limitation must be evidenced by a separate
8 instrument executed by the purchaser.

9 (b) Subject to subsection (c), a cause of action for breach
10 of warranty of quality, regardless of the purchaser's lack of
11 knowledge of the breach, accrues:

12 (1) As to a unit, at the time the purchaser to whom the
13 warranty is first made enters into possession if a possessory
14 interest was conveyed or at the time of acceptance of the
15 instrument of conveyance if a nonpossessory interest was
16 conveyed; and

17 (2) As to each common element, at the time the common
18 element is completed or, if later, as to (i) a common element
19 that may be added to the common interest community or
20 portion thereof, at the time the first unit therein is conveyed
21 to a bona fide purchaser, or (ii) a common element within
22 any other portion of the common interest community, at the
23 time the first unit is conveyed to a bona fide purchaser.

24 (c) If a warranty of quality explicitly extends to future
25 performance or duration of any improvement or component
26 of the common interest community, the cause of action
27 accrues at the time the breach is discovered or at the end of
28 the period for which the warranty explicitly extends,
29 whichever is earlier.

§36B-4-117. Effect of violations on rights of action; attorney's fees.

1 If a declarant or any other person subject to this chapter
2 fails to comply with any of its provisions or any provision of
3 the declaration or bylaws, any person or class of persons
4 adversely affected by the failure to comply has a claim for
5 appropriate relief. Punitive damages may be awarded for a

6 willful failure to comply with this chapter. The court, in an
7 appropriate case, may award reasonable attorney's fees.

§36B-4-118. Labeling of promotional material.

1 No promotional material may be displayed or delivered to
2 prospective purchasers which describes or portrays an
3 improvement that is not in existence unless the description
4 or portrayal of the improvement in the promotional
5 material is conspicuously labeled or identified either as
6 "MUST BE BUILT" or as "NEED NOT BE BUILT."

§36B-4-119. Declarant's obligation to complete and restore.

1 (a) Except for improvements labeled "Need Not Be
2 Built," the declarant shall complete all improvements
3 depicted on any site plan or other graphic representation,
4 including any plats or plans prepared pursuant to section
5 2-109, whether or not that site plan or other graphic
6 representation is contained in the public offering statement
7 or in any promotional material distributed by or for the
8 declarant.

9 (b) The declarant is subject to liability for the prompt
10 repair and restoration, to a condition compatible with the
11 remainder of the common interest community, of any
12 portion of the common interest community affected by the
13 exercise of rights reserved pursuant to or created by
14 sections 2-110, 2-111, 2-112, 2-113, 2-115, 2-116.

§36B-4-120. Substantial completion of units.

1 In the case of a sale of a unit in which delivery of a public
2 offering statement is required, a contract of sale may be
3 executed, but no interest in that unit may be conveyed until
4 the declaration is recorded and the unit is substantially
5 completed, as evidenced by a recorded certificate of
6 substantial completion executed by an independent
7 registered architect, surveyor or engineer, or by issuance of
8 a certificate of occupancy authorized by law.

CHAPTER 165

(H. B. 1184—By Delegate Neal and Delegate Rogers)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to repeal section six, article eleven, chapter twenty-

seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty-nine of said code by adding thereto a new article, designated article four, relating to enacting the uniform durable power of attorney act; establishing when a power of attorney is effective upon the death or disability of a principal; allowing for good faith exercise of the power; providing for exercise of power in relation to fiduciary; allowing for revocation; and providing for severability and effective date.

Be it enacted by the Legislature of West Virginia:

That section six, article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter thirty-nine of said code be amended by adding thereto a new article, designated article four, to read as follows:

ARTICLE 4. UNIFORM DURABLE POWER OF ATTORNEY.

§39-4-1. Definition.

§39-4-2. Durable power of attorney not affected by disability.

§39-4-3. Relation of attorney in fact to court-appointed fiduciary.

§39-4-4. Power of attorney not revoked until notice.

§39-4-5. Proof of continuance of durable and other powers of attorney by affidavit.

§39-4-6. Uniformity of application and construction.

§39-4-7. Short title.

§39-4-1. Definition.

1 A durable power of attorney is a power of attorney
2 by which a principal designates another his attorney in
3 fact in writing and the writing contains the words "This
4 power of attorney shall not be affected by subsequent
5 disability or incapacity of the principal," or "This power
6 of attorney shall become effective upon the disability or
7 incapacity of the principal," or similar words showing
8 the intent of the principal that the authority conferred
9 shall be exercisable notwithstanding the principal's
10 subsequent disability or incapacity.

§39-4-2. Durable power of attorney not affected by disability .

1 All acts done by an attorney in fact pursuant to a

2 durable power of attorney during any period of disabil-
3 ity or incapacity of the principal have the same effect
4 and inure to the benefit of and bind the principal and
5 his successors in interest as if the principal were
6 competent and not disabled.

**§39-4-3. Relation of attorney in fact to court-appointed
fiduciary.**

1 (a) If, following execution of a durable power of
2 attorney, a court or county commission of the principal's
3 domicile appoints a conservator, guardian of the estate,
4 or other fiduciary charged with the management of all
5 of the principal's property or all of his property except
6 specified exclusions, the attorney in fact is accountable
7 to the fiduciary as well as to the principal. The fiduciary
8 has the same power to revoke or amend the power of
9 attorney that the principal would have had if he were
10 not disabled or incapacitated.

11 (b) A principal may nominate, by a durable power of
12 attorney, the conservator, guardian of his estate, or
13 guardian of his person for consideration by the court if
14 protective proceedings for the principal's person or
15 estate are thereafter commenced. The court shall make
16 its appointment in accordance with the principal's most
17 recent nomination in a durable power of attorney except
18 for good cause or disqualification.

§39-4-4. Power of attorney not revoked until notice.

1 (a) The death of a principal who has executed a
2 written power of attorney, durable or otherwise, does
3 not revoke or terminate the agency as to the attorney
4 in fact or other person, who, without actual knowledge
5 of the death of the principal, acts in good faith under
6 the power. Any action so taken, unless otherwise invalid
7 or unenforceable, binds successors in interest of the
8 principal.

9 (b) The disability or incapacity of a principal who has
10 previously executed a written power of attorney that is
11 not a durable power does not revoke or terminate the
12 agency as to the attorney in fact or other person, who,
13 without actual knowledge of the disability or incapacity

14 of the principal, acts in good faith under the power. Any
15 action so taken, unless otherwise invalid or unenforce-
16 able, binds the principal and his successors in interest.

§39-4-5. Proof of continuance of durable and other powers of attorney by affidavit.

1 As to acts undertaken in good faith reliance thereon,
2 an affidavit executed by the attorney in fact under a
3 power of attorney, durable or otherwise, stating that he
4 did not have at the time of exercise of the power actual
5 knowledge of the termination of the power by revocation
6 or of the principal's death, disability or incapacity is
7 conclusive proof of the nonrevocation or nontermination
8 of the power at that time. If the exercise of the power
9 of attorney requires execution and delivery of any
10 instrument that is recordable, the affidavit when
11 authenticated for record is likewise recordable. Any
12 bona fide purchaser for value who purchases property
13 from an attorney in fact who acts under a power of
14 attorney specifying that the power shall become effec-
15 tive upon the disability, incompetence or incapacity of
16 the principal or similar words is under no duty to
17 ascertain whether the principal was or is, in fact,
18 disabled, incompetent or incapacitated at the time of the
19 contract of sale or the actual transfer of the property,
20 and such right, title and interest as such purchaser may
21 acquire shall not be affected by the principal's ability,
22 competency or capacity or lack thereof. This section does
23 not affect any provision in a power of attorney for its
24 termination by expiration of time or occurrence of an
25 event other than express revocation or a change in the
26 principal's capacity.

§39-4-6. Uniformity of application and construction.

1 This article shall be applied and construed to effec-
2 tuate its general purpose to make uniform the law with
3 respect to the subject of this act among states enacting
4 it.

§39-4-7. Short title.

1 This article may be cited as the "Uniform Durable
2 Power of Attorney Act."

CHAPTER 166

(Com. Sub. for S. B. 150—By Senators Sharpe, Cook, Palumbo, Colombo, Fanning, Burdette and Shaw)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to repeal sections one, two, three, four, five and six, article one, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter by adding thereto a new article, designated article one-a, relating to enacting the uniform fraudulent transfers act; providing for definitions; defining when transfers are fraudulent; defining when transfers occur; providing for remedies to creditors; providing for protection of transferees; time limit on causes of action; providing that present law supplement this act; and repealing the provisions relating to acts void as to creditors, purchasers and others.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five and six, article one, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. UNIFORM FRAUDULENT TRANSFERS ACT.

- §40-1A-1. Definitions.
- §40-1A-2. Insolvency.
- §40-1A-3. Value.
- §40-1A-4. Transfers fraudulent as to present and future creditors.
- §40-1A-5. Transfers fraudulent as to present creditors.
- §40-1A-6. When transfer is made or obligation is incurred.
- §40-1A-7. Remedies of creditors.
- §40-1A-8. Defenses, liability and protection of transferee.
- §40-1A-9. Extinguishment of claim for relief, cause of action.
- §40-1A-10. Supplementary provisions.
- §40-1A-11. Uniformity of application and construction.
- §40-1A-12. Short title.

§40-1A-1. Definitions.

- 1 As used in this article:
- 2 (a) "Affiliate" means:

- 3 (1) A person who directly or indirectly owns, controls or
4 holds with power to vote, twenty percent or more of the
5 outstanding voting securities of the debtor, other than a
6 person who holds the securities:
- 7 (i) As a fiduciary or agent without sole discretionary
8 power to vote the securities; or
- 9 (ii) Solely to secure a debt, if the person has not
10 exercised the power to vote;
- 11 (2) A corporation twenty percent or more of whose
12 outstanding voting securities are directly or indirectly
13 owned, controlled, or held with power to vote, by the debtor
14 or a person who directly or indirectly owns, controls or
15 holds, with power to vote, twenty percent or more of the
16 outstanding voting securities of the debtor, other than a
17 person who holds the securities:
- 18 (i) As a fiduciary or agent without sole power to vote the
19 securities; or
- 20 (ii) Solely to secure a debt, if the person has not in fact
21 exercised the power to vote;
- 22 (3) A person whose business is operated by the debtor
23 under a lease or other agreement, or a person substantially
24 all of whose assets are controlled by the debtor; or
- 25 (4) A person who operates the debtor's business under a
26 lease or other agreement or controls substantially all of the
27 debtor's assets.
- 28 (b) "Asset" means property of a debtor, but the term
29 does not include:
- 30 (1) Property to the extent it is encumbered by a valid
31 lien;
- 32 (2) Property to the extent it is generally exempt under
33 nonbankruptcy law; or
- 34 (3) An interest in property held in tenancy by the
35 entireties to the extent it is not subject to process by a
36 creditor holding a claim against only one tenant.
- 37 (c) "Claim" means a right to payment, whether or not
38 the right is reduced to judgment, liquidated, unliquidated,
39 fixed, contingent, matured, unmatured, disputed,
40 undisputed, legal, equitable, secured or unsecured.

- 41 (d) "Creditor" means a person who has a claim.
- 42 (e) "Debt" means liability on a claim.
- 43 (f) "Debtor" means a person who is liable on a claim.
- 44 (g) "Insider" includes:
- 45 (1) If the debtor is an individual:
- 46 (i) A relative of the debtor or of a general partner of the
- 47 debtor;
- 48 (ii) A partnership in which the debtor is a general
- 49 partner;
- 50 (iii) A general partner in a partnership described in
- 51 paragraph (ii); or
- 52 (iv) A corporation of which the debtor is a director,
- 53 officer or person in control;
- 54 (2) If the debtor is a corporation:
- 55 (i) A director of the debtor;
- 56 (ii) An officer of the debtor;
- 57 (iii) A person in control of the debtor;
- 58 (iv) A partnership in which the debtor is a general
- 59 partner;
- 60 (v) A general partner in a partnership described in
- 61 paragraph (iv); or
- 62 (vi) A relative of a general partner, director, officer or
- 63 person in control of the debtor;
- 64 (3) If the debtor is a partnership:
- 65 (i) A general partner in the debtor;
- 66 (ii) A relative of a general partner in, a general partner
- 67 of, or a person in control of the debtor;
- 68 (iii) Another partnership in which the debtor is a
- 69 general partner;
- 70 (iv) A general partner in a partnership described in
- 71 paragraph (iii); or
- 72 (v) A person in control of the debtor;
- 73 (4) An affiliate, or an insider of an affiliate as if the
- 74 affiliate were the debtor; and
- 75 (5) A managing agent of the debtor.
- 76 (h) "Lien" means a charge against or an interest in
- 77 property to secure payment of a debt or performance of an
- 78 obligation, and includes a security interest created by
- 79 agreement, a judicial lien obtained by legal or equitable
- 80 process or proceedings, a common-law lien or a statutory
- 81 lien.
- 82 (i) "Person" means an individual, partnership,

83 corporation, association, organization, government or
84 governmental subdivision or agency, business trust, estate,
85 trust or any other legal or commercial entity.

86 (j) "Property" means anything that may be the subject
87 of ownership.

88 (k) "Relative" means an individual related by
89 consanguinity within the third degree as determined by the
90 common law, a spouse or an individual related to a spouse
91 within the third degree as so determined, and includes an
92 individual in an adoptive relationship within the third
93 degree.

94 (l) "Transfer" means every mode, direct or indirect,
95 absolute or conditional, voluntary or involuntary, of
96 disposing of or parting with an asset or an interest in an
97 asset, and includes payment of money, release, lease and
98 creation of a lien or other encumbrance.

99 (m) "Valid lien" means a lien that is effective against the
100 holder of a judicial lien subsequently obtained by legal or
101 equitable process or proceedings.

§40-1A-2. Insolvency.

1 (a) A debtor is insolvent if the sum of the debtor's debts
2 is greater than all of the debtor's assets at a fair valuation.

3 (b) A debtor who is generally not paying his (or her)
4 debts as they become due is presumed to be insolvent.

5 (c) A partnership is insolvent under subsection (a) if the
6 sum of the partnership's debts is greater than the aggregate,
7 at a fair valuation, of all of the partnership's assets and the
8 sum of the excess of the value of each general partner's
9 nonpartnership assets over the partner's nonpartnership
10 debts.

11 (d) Assets under this section do not include property
12 that has been transferred, concealed or removed with intent
13 to hinder, delay or defraud creditors or that has been
14 transferred in a manner making the transfer voidable under
15 this article.

16 (e) Debts under this section do not include an obligation
17 to the extent it is secured by a valid lien on property of the
18 debtor not included as an asset.

§40-1A-3. Value.

1 (a) Value is given for a transfer or an obligation if, in

2 exchange for the transfer or obligation, property is
3 transferred or an antecedent debt is secured or satisfied, but
4 value does not include an unperformed promise made
5 otherwise than in the ordinary course of the promisor's
6 business to furnish support to the debtor or another person.

7 (b) For the purposes of subdivision (2), subsection (a),
8 section four, and subsection (a), section five, all of this
9 article, a person gives a reasonably equivalent value if the
10 person acquires an interest of the debtor in an asset
11 pursuant to a regularly conducted, noncollusive foreclosure
12 sale or execution of a power of sale for the acquisition or
13 disposition of the interest of the debtor upon default under
14 a mortgage, deed of trust or security agreement.

15 (c) A transfer is made for present value if the exchange
16 between the debtor and the transferee is intended by them
17 to be contemporaneous and is in fact substantially
18 contemporaneous.

**§40-1A-4. Transfers fraudulent as to present and future
creditors.**

1 (a) A transfer made or obligation incurred by a debtor is
2 fraudulent as to a creditor, whether the creditor's claim
3 arose before or after the transfer was made or the obligation
4 was incurred, if the debtor made the transfer or incurred the
5 obligation:

6 (1) With actual intent to hinder, delay or defraud any
7 creditor of the debtor; or

8 (2) Without receiving a reasonably equivalent value in
9 exchange for the transfer or obligation and the debtor:

10 (i) Was engaged or was about to engage in a business or a
11 transaction for which the remaining assets of the debtor
12 were unreasonably small in relation to the business or
13 transaction; or

14 (ii) Intended to incur, or believed or reasonably should
15 have believed that he (or she) would incur, debts beyond his
16 (or her) ability to pay as they became due.

17 (b) In determining actual intent under subdivision (1),
18 subsection (a), consideration may be given, among other
19 factors, to whether:

20 (1) The transfer or obligation was to an insider;

21 (2) The debtor retained possession or control of the
22 property transferred after the transfer;

23 (3) The transfer or obligation was disclosed or
24 concealed;

25 (4) Before the transfer was made or obligation was
26 incurred, the debtor had been sued or threatened with suit;

27 (5) The transfer was of substantially all the debtor's
28 assets;

29 (6) The debtor absconded;

30 (7) The debtor removed or concealed assets;

31 (8) The value of the consideration received by the debtor
32 was reasonably equivalent to the value of the asset
33 transferred or the amount of the obligation incurred;

34 (9) The debtor was insolvent or became insolvent
35 shortly after the transfer was made or the obligation was
36 incurred;

37 (10) The transfer occurred shortly before or shortly
38 after a substantial debt was incurred; and

39 (11) The debtor transferred the essential assets of the
40 business to a lienor who transferred the assets to an insider
41 of the debtor.

§40-1A-5. Transfers fraudulent as to present creditors.

1 (a) A transfer made or obligation incurred by a debtor is
2 fraudulent as to a creditor whose claim arose before the
3 transfer was made or the obligation was incurred if the
4 debtor made the transfer or incurred the obligation without
5 receiving a reasonably equivalent value in exchange for the
6 transfer or obligation and the debtor was insolvent at that
7 time or the debtor became insolvent as a result of the
8 transfer or obligation.

9 (b) A transfer made by a debtor is fraudulent as to a
10 creditor whose claim arose before the transfer was made if
11 the transfer was made to an insider for an antecedent debt,
12 the debtor was insolvent at that time and the insider had
13 reasonable cause to believe that the debtor was insolvent.

§40-1A-6. When transfer is made or obligation is incurred.

1 For the purposes of this article:

2 (a) A transfer is made:

3 (1) With respect to an asset that is real property other
4 than a fixture, but including the interest of a seller or
5 purchaser under a contract for the sale of the asset, when
6 the transfer is so far perfected that a good-faith purchaser

7 of the asset from the debtor against whom applicable law
8 permits the transfer to be perfected cannot acquire an
9 interest in the asset that is superior to the interest of the
10 transferee; and

11 (2) With respect to an asset that is not real property or
12 that is a fixture, when the transfer is so far perfected that a
13 creditor on a simple contract cannot acquire a judicial lien
14 otherwise than under this article that is superior to the
15 interest of the transferee;

16 (b) If applicable law permits the transfer to be perfected
17 as provided in subdivision (a) and the transfer is not so
18 perfected before the commencement of an action for relief
19 under this article, the transfer is considered made
20 immediately before the commencement of the action;

21 (c) If applicable law does not permit the transfer to be
22 perfected as provided in subdivision (a), the transfer is
23 made when it becomes effective between the debtor and the
24 transferee; and

25 (d) A transfer is not made until the debtor has acquired
26 rights in the asset transferred and an obligation is incurred.
27 If the obligation is oral, a transfer is made when the
28 obligation becomes effective. If the obligation is evidenced
29 by a writing, the obligation becomes effective when the
30 writing is delivered to or for the benefit of the obligee.

§40-1A-7. Remedies of creditors.

1 (a) In an action for relief against a transfer or obligation
2 under this article, a creditor, subject to the limitations in
3 section eight of this article, may obtain:

4 (1) Avoidance of the transfer or obligation to the extent
5 necessary to satisfy the creditor's claim;

6 (2) An attachment or other provisional remedy against
7 the asset transferred or other property of the transferee;.

8 (3) Subject to applicable principles of equity and in
9 accordance with applicable rules of civil procedure:

10 (i) An injunction against further disposition by the
11 debtor or a transferee, or both, of the asset transferred or of
12 other property;

13 (ii) Appointment of a receiver to take charge of the asset
14 transferred or of other property of the transferee; or

15 (iii) Any other relief the circumstances may require.

16 (b) If a creditor has obtained a judgment on a claim

17 against the debtor, the creditor, if the court so orders, may
18 levy execution on the asset transferred or its proceeds.

§40-1A-8. Defenses, liability and protection of transferee.

1 (a) A transfer or obligation is not voidable under
2 subdivision (1), subsection (a), section four of this article,
3 against a person who took in good faith and for a reasonably
4 equivalent value or against any subsequent transferee or
5 obligee.

6 (b) Except as otherwise provided in this section, to the
7 extent a transfer is voidable in an action by a creditor under
8 subdivision (1), subsection (a), section seven of this article,
9 the creditor may recover judgment for the value of the asset
10 transferred, as adjusted under subsection (c) of this section,
11 or the amount necessary to satisfy the creditor's claim,
12 whichever is less. The judgment may be entered against:

13 (1) The first transferee of the asset or the person for
14 whose benefit the transfer was made; or

15 (2) Any subsequent transferee other than a good faith
16 transferee who took for value or from any subsequent
17 transferee.

18 (c) If the judgment under subsection (b) of this section is
19 based upon the value of the asset transferred, the judgment
20 must be for an amount equal to the value of the asset at the
21 time of the transfer, subject to adjustment as the equities
22 may require.

23 (d) Notwithstanding voidability of a transfer or an
24 obligation under this article, a good-faith transferee or
25 obligee is entitled, to the extent of the value given the debtor
26 for the transfer or obligation, to:

27 (1) A lien on or a right to retain any interest in the asset
28 transferred;

29 (2) Enforcement of any obligation incurred; or

30 (3) A reduction in the amount of the liability on the
31 judgment.

32 (e). A transfer is not voidable under subdivision (2),
33 subsection (a), section four or section five, all of this article,
34 if the transfer results from:

35 (1) Termination of a lease upon default by the debtor
36 when the termination is pursuant to the lease and
37 applicable law; or

38 (2) Enforcement of a security interest in compliance
39 with article nine of the uniform commercial code.

40 (f) A transfer is not voidable under subsection (b),
41 section five of this article:

42 (1) To the extent the insider gave new value to or for the
43 benefit of the debtor after the transfer was made unless the
44 new value was secured by a valid lien;

45 (2) If made in the ordinary course of business or
46 financial affairs of the debtor and the insider; or

47 (3) If made pursuant to a good-faith effort to
48 rehabilitate the debtor and the transfer secured present
49 value given for that purpose as well as an antecedent debt of
50 the debtor.

§40-1A-9. Extinguishment of claim for relief, cause of action.

1 A cause of action with respect to a fraudulent transfer or
2 obligation under this article is extinguished unless action is
3 brought:

4 (a) Under subdivision (1), subsection (a), section four of
5 this article, within four years after the transfer was made or
6 the obligation was incurred or, if later, within one year after
7 the transfer or obligation was or could reasonably have
8 been discovered by the claimant;

9 (b) Under subdivision (2), subsection (a), section four or
10 subsection (a), section five of this article, within four years
11 after the transfer was made or the obligation was incurred;
12 or

13 (c) Under subsection (b), section five of this article,
14 within one year after the transfer was made or the
15 obligation was incurred.

§40-1-10. Supplementary provisions.

1 Unless displaced by the provisions of this article, the
2 principles of law and equity, including the law merchant
3 and the law relating to principal and agent, estoppel,
4 laches, fraud, misrepresentation, duress, coercion, mistake,
5 insolvency or other validating or invalidating cause,
6 supplement its provisions.

§40-1A-11. Uniformity of application and construction.

1 This article shall be applied and construed to effectuate

- 2 its general purpose to make uniform the law with respect to
- 3 the subject of this article among states enacting it.

§40-1A-12. Short title.

- 1 This article may be cited as the "Uniform Fraudulent
- 2 Transfers Act."

CHAPTER 167

(S. B. 103—By Senators Sharpe, Cook, Palumbo, Colombo, Fanning, Burdette and Shaw)

[Passed February 12, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, five, eight, nine, eleven, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-two, twenty-three, twenty-eight, twenty-nine, thirty, thirty-one, thirty-three, thirty-five, thirty-eight, forty-two, forty-four, forty-nine and fifty, article nine, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to revising the uniform limited partnership act; definitions; name of limited partnership and reservation thereof; specifying office and agent to be maintained by limited partnership; requiring records to be kept and availability thereof; formation and nature of partnership business; execution, amendment, cancellation, filing, notice and delivery of certificate of limited partnership; liability for false statement in certificate; admission of limited partners; voting by limited partners; liability of limited partner to third parties; person erroneously believing himself a limited partner; admission of additional general partners; events of withdrawal of general partners; liability for contribution; sharing of profits, losses and distributions; interim distributions; withdrawal of general or limited partner; distribution in kind; liability upon return of contribution; right of assignee to become limited partner; nonjudicial and judicial dissolution; registration of foreign limited partnerships and names thereof; issuance of registration; changes and amendments to registration; and effective date of article.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, five, eight, nine, eleven, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-two, twenty-three, twenty-eight, twenty-nine, thirty, thirty-one, thirty-three, thirty-five, thirty-eight, forty-two, forty-four, forty-nine and fifty, article nine, 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 9. UNIFORM LIMITED PARTNERSHIP ACT.

- §47-9-1. Definitions.
- §47-9-2. Name of limited partnership.
- §47-9-3. Reservation of name.
- §47-9-5. Office and records.
- §47-9-8. Certificate and formation of limited partnership.
- §47-9-9. Amendment to certificate.
- §47-9-11. Execution of certificates.
- §47-9-12. Judicial amendment or cancellation of certificate.
- §47-9-13. Filing of certificate.
- §47-9-15. Notice.
- §47-9-16. Delivery of certificates to limited partners.
- §47-9-17. Admission of limited partners.
- §47-9-19. Liability to third parties.
- §47-9-20. Person erroneously believing himself limited partner.
- §47-9-22. Admission of additional general partners.
- §47-9-23. Events of withdrawal of general partner.
- §47-9-28. Liability for contribution.
- §47-9-29. Sharing of profits and losses.
- §47-9-30. Sharing of distributions.
- §47-9-31. Interim distributions.
- §47-9-33. Withdrawal of limited partner.
- §47-9-35. Distribution in kind.
- §47-9-38. Liability upon return of contribution.
- §47-9-42. Right of assignee to become limited partner.
- §47-9-44. Nonjudicial dissolution.
- §47-9-49. Registration of foreign limited partnership.
- §47-9-50. Issuance of registration; filing in the office of the clerk of the county commission.

§47-9-1. Definitions.

- 1 As used in this article, unless the context otherwise
- 2 requires:
- 3 (1) "Certificate of limited partnership" means the
- 4 certificate referred to in section eight of this article and the
- 5 certificate as amended;
- 6 (2) "Contribution" means any cash, property, services

7 rendered, or a promissory note or other binding obligation
8 to contribute cash or property or to perform services, which
9 a partner contributes to a limited partnership in his
10 capacity as a partner;

11 (3) "Event of withdrawal of a general partner" means
12 an event that causes a person to cease to be a general partner
13 as provided in section twenty-three of this article;

14 (4) "Foreign limited partnership" means a partnership
15 formed under the laws of any state other than this state and
16 having as partners one or more general partners and one or
17 more limited partners;

18 (5) "General partner" means a person who has been
19 admitted to a limited partnership as a general partner in
20 accordance with the partnership agreement and named in
21 the certificate of limited partnership as a general partner;

22 (6) "Limited partner" means a person who has been
23 admitted to a limited partnership as a limited partner in
24 accordance with the partnership agreement;

25 (7) "Limited partnership" and "domestic limited
26 partnership" means a partnership formed by two or more
27 persons under the laws of this state and having one or more
28 general partners and one or more limited partners;

29 (8) "Partner" means a limited or general partner;

30 (9) "Partnership agreement" means any valid
31 agreement, written or oral, of the partners as to the affairs
32 of a limited partnership and the conduct of its business;

33 (10) "Partnership interest" means a partner's share of
34 the profits and losses of a limited partnership and the right
35 to receive distributions of partnership assets;

36 (11) "Person" means a natural person, partnership,
37 limited partnership (domestic or foreign), trust, estate,
38 association or corporation; and

39 (12) "State" means a state, territory or possession of the
40 United States, the District of Columbia or the
41 Commonwealth of Puerto Rico.

§47-9-2. Name of limited partnership.

1 The name of each limited partnership as set forth in its
2 certificate of limited partnership:

3 (1) Shall contain without abbreviation the words
4 "limited partnership";

5 (2) May not contain the name of a limited partner unless

- 6 (i) it is also the name of a general partner or the corporate
7 name of a corporate general partner, or (ii) the business of
8 the limited partnership had been carried on under the name
9 before the admission of that limited partner;
- 10 (3) May not be the same as, or deceptively similar to the
11 name of any corporation or limited partnership organized
12 under the laws of this state or licensed or registered as a
13 foreign corporation or limited partnership in this state; and
- 14 (4) May not include the words "engineer," "engineers,"
15 "engineering" or any combination of those words unless the
16 purpose of the corporation is to practice professional
17 engineering as defined in article thirteen, chapter thirty of
18 this code, as amended, and one or more of the incorporators
19 is a registered professional engineer as defined therein.

§47-9-3. Reservation of name.

- 1 (a) The exclusive right to the use of a name may be
2 reserved by:
- 3 (1) Any person intending to organize a limited
4 partnership under this article and to adopt that name;
- 5 (2) Any domestic limited partnership or any foreign
6 limited partnership registered in this state which, in either
7 case, intends to adopt that name;
- 8 (3) Any foreign limited partnership intending to
9 register in this state and adopt that name; and
- 10 (4) Any person intending to organize a foreign limited
11 partnership and intending to have it registered in this state
12 and adopt that name.
- 13 (b) The reservation shall be made by filing with the
14 secretary of state an application, executed by the applicant,
15 to reserve a specified name. If the secretary of state finds
16 that the name is available for use by a domestic or foreign
17 limited partnership, he shall reserve that name for the
18 exclusive use of the applicant for a period of one hundred
19 twenty days. Once the applicant reserves a name he may not
20 reserve the same name again until more than sixty days
21 after the expiration of the one hundred twenty day period
22 for which the name was last reserved. The right to the
23 exclusive use of a reserved name may be transferred to any
24 other person by filing in the office of the secretary of state a
25 notice of the transfer, executed by the applicant for whom
26 the name was reserved and specifying the name and address
27 of the transferee.

§47-9-5. Office and records.

- 1 (a) Each limited partnership shall continuously
2 maintain in this state an office, which may, but need not be,
3 a place of its business in this state, at which shall be kept the
4 following records:
- 5 (1) A current list of the full name and last known
6 business address of each partner, separately identifying the
7 general and the limited partners, set forth in alphabetical
8 order;
- 9 (2) A copy of the certificate of limited partnership and
10 all certificates of amendment thereto, together with
11 executed copies of any power of attorney pursuant to which
12 any certificate has been executed;
- 13 (3) A copy of the limited partnership's federal, state and
14 local income tax returns and reports, if any, for the three
15 most recent years;
- 16 (4) A copy of any then effective written partnership
17 agreements and of any financial statements of the limited
18 partnership for the three most recent years; and
- 19 (5) Unless contained in a written partnership
20 agreement, a writing setting out:
- 21 (A) The amount of cash and a description and statement
22 of the agreed value of the other property or services
23 contributed by each partner and which each partner has
24 agreed to contribute;
- 25 (B) The times at which or events on the happening of
26 which any additional contributions agreed to be made by
27 each partner are to be made;
- 28 (C) Any right of a partner to receive, or of a general
29 partner to make, distributions to a partner which include a
30 return of all or any part of the partner's contribution; and
- 31 (D) Any events upon the happening of which the limited
32 partnership is to be dissolved and its affairs wound up.
- 33 (b) Such records shall be available for inspection and
34 copying at the reasonable request, and at the expense, of
35 any partner during ordinary business hours.

§47-9-8. Certificate and formation of limited partnership.

- 1 (a) In order to form a limited partnership, two or more
2 persons must execute a certificate of limited partnership.
3 The certificate shall be filed in the office of the secretary of
4 state and set forth:

- 5 (1) The name of the limited partnership;
- 6 (2) The general character of its business;
- 7 (3) The address of the office and the name and address of
- 8 the agent for service of process required to be maintained by
- 9 section four of this article;
- 10 (4) The name and the business address of each general
- 11 partner; and
- 12 (5) Any other matters the general partners determine to
- 13 include therein.
- 14 (b) A limited partnership is formed at the time of the
- 15 filing of the certificate of limited partnership in the office of
- 16 the secretary of state or at any later time specified in the
- 17 certificate of limited partnership if, in either case, there has
- 18 been substantial compliance with the requirements of this
- 19 section.

§47-9-9. Amendment to certificate.

- 1 (a) A certificate of limited partnership is amended by
- 2 filing a certificate of amendment thereto in the office of the
- 3 secretary of state. The certificate shall set forth:
- 4 (1) The name of the limited partnership;
- 5 (2) The date of the filing of the certificate; and
- 6 (3) The amendment to the certificate.
- 7 (b) Within thirty days after the happening of any of the
- 8 following events, an amendment to a certificate of limited
- 9 partnership reflecting the occurrence of the event or events
- 10 shall be filed:
- 11 (1) The admission of a new partner;
- 12 (2) The withdrawal of a partner; or
- 13 (3) The continuation of the business under section forty-
- 14 four of this article after an event of withdrawal of a general
- 15 partner.
- 16 (c) A general partner who becomes aware that any
- 17 statement in a certificate of limited partnership was false
- 18 when made or that any arrangements or other facts
- 19 described have changed, making the certificate inaccurate
- 20 in any respect, shall promptly amend the certificate.
- 21 (d) A certificate of limited partnership may be amended
- 22 at any time for any other proper purpose the general
- 23 partners determine.
- 24 (e) No person has any liability because an amendment to
- 25 a certificate of limited partnership has not been filed to

26 reflect the occurrence of any event referred to in subsection
27 (b) of this section if the amendment is filed within the
28 thirty-day period specified in subsection (b).

29 (f) A restated certificate of limited partnership may be
30 executed and filed in the same manner as a certificate of
31 amendment.

§47-9-11. Execution of certificates.

1 (a) Each certificate required by this article to be filed in
2 the office of the secretary of state shall be executed in the
3 following manner:

4 (1) An original certificate of limited partnership must
5 be signed by all general partners;

6 (2) A certificate of amendment must be signed by at
7 least one general partner and by each other general partner
8 designated in the certificate as a new general partner; and

9 (3) A certificate of cancellation must be signed by all
10 general partners.

11 (b) Any person may sign a certificate by an attorney-in-
12 fact, but a power of attorney to sign a certificate relating to
13 the admission of a general partner must specifically
14 describe the admission.

15 (c) The execution of a certificate by a general partner
16 constitutes an affirmation under the penalties of perjury
17 that the facts stated therein are true.

§47-9-12. Judicial amendment or cancellation of certificate.

1 If a person required by section eleven of this article to
2 execute a certificate of amendment or cancellation fails or
3 refuses to do so, any other person who is adversely affected
4 by the failure or refusal may petition the appropriate circuit
5 court to direct the execution of the certificate. If the court
6 finds that the amendment or cancellation is proper and that
7 any person so designated has failed or refused to execute the
8 certificate, it shall order the secretary of state to record an
9 appropriate certificate of amendment or cancellation.

§47-9-13. Filing of certificate.

1 (a) Two signed copies of the certificate of limited
2 partnership and of any certificates of amendment or
3 cancellation, or of any judicial decree of amendment or
4 cancellation, shall be delivered to the secretary of state. No
5 photostatic copies may be used. A person who executes a

6 certificate as an agent or fiduciary need not exhibit
7 evidence of his authority as a prerequisite to filing. Unless
8 the secretary of state finds that any certificate does not
9 conform to law, upon receipt of all filing fees required by
10 law, he shall:

11 (1) Endorse on each duplicate original the word "Filed"
12 and the day, month and year of the filing thereof;

13 (2) File one duplicate original in his office; and

14 (3) Return the other duplicate original to the person
15 who filed it or his representative.

16 (b) Upon the filing of a certificate of amendment, or
17 judicial decree of amendment, in the office of the secretary
18 of state the certificate of limited partnership shall be
19 amended as set forth therein, and upon the effective date of
20 a certificate of cancellation, or a judicial decree thereof, the
21 certificate of limited partnership is canceled.

22 (c) The certificate of limited partnership and any
23 certificates of amendment or cancellation or of any judicial
24 decree of amendment or cancellation, or a duly certified
25 copy thereof, shall be recorded in the office of the clerk of
26 the county commission of the county in which such office, as
27 required by section five of this article, is located.

28 This filing, or failure to file, shall in no way affect the
29 formation of the limited partnership. Only the filing in the
30 office of the secretary of state, required by section eight of
31 this article, shall determine the validity of the limited
32 partnership.

§47-9-15. Notice.

1 The fact that a certificate of limited partnership is on file
2 in the office of the secretary of state is notice that the
3 partnership is a limited partnership and the persons
4 designated therein as general partners are general partners,
5 but it is not notice of any other fact.

§47-9-16. Delivery of certificates to limited partners.

1 Upon the return by the secretary of state pursuant to
2 section thirteen of this article of a certificate marked
3 "Filed," the general partners shall promptly deliver or mail
4 a copy of the certificate of limited partnership and each
5 certificate of amendment or cancellation to each limited
6 partner unless the partnership agreement provides
7 otherwise.

§47-9-17. Admission of limited partners.

1 (a) A person becomes a limited partner on the later of:

2 (1) The date the original certificate of limited
3 partnership is filed; or

4 (2) The date stated in the records of the limited
5 partnership as the date that person becomes a limited
6 partner.

7 (b) After the filing of a limited partnership's original
8 certificate of limited partnership, a person may be admitted
9 as an additional limited partner:

10 (1) In the case of a person acquiring a partnership
11 interest directly from the limited partnership, upon the
12 compliance with the partnership agreement or, if the
13 partnership agreement does not so provide, upon the
14 written consent of all partners; and

15 (2) In the case of an assignee of a partnership interest of
16 a partner who has the power, as provided in section forty-
17 two of this article, to grant the assignee the right to become
18 a limited partner, upon the exercise of that power and
19 compliance with any conditions limiting the grant or
20 exercise of that power.

§47-9-19. Liability to third parties.

1 (a) Except as provided in subsection (d) of this section, a
2 limited partner is not liable for the obligations of a limited
3 partnership unless he is also a general partner or, in
4 addition to the exercise of his rights and powers as a limited
5 partner, he takes part in the control of the business:
6 *Provided*, That if the limited partner participates in the
7 control of the business, he is liable only to persons who
8 transact business with the limited partnership reasonably
9 believing, based on the limited partner's conduct, that the
10 limited partner is a general partner.

11 (b) A limited partner does not participate in the control
12 of the business within the meaning of subsection (a) of this
13 section solely by doing one or more of the following:

14 (1) Being a contractor for or an agent or employee of the
15 limited partnership or of a general partner or being an
16 officer, director or shareholder of a general partner that is a
17 corporation;

18 (2) Consulting with and advising a general partner with
19 respect to the business of the limited partnership;

20 (3) Acting as surety for the limited partnership or
21 guaranteeing or assuming one or more specific obligations
22 of the limited partnership;

23 (4) Taking any action required or permitted by law to
24 bring or pursue a derivative action in the right of the limited
25 partnership;

26 (5) Requesting or attending a meeting of partners;

27 (6) Proposing, approving or disapproving, by voting or
28 otherwise on one or more of the following matters:

29 (i) The dissolution and winding up of the limited
30 partnership;

31 (ii) The sale, exchange, lease, mortgage, pledge or other
32 transfer of all or substantially all of the assets of the limited
33 partnership;

34 (iii) The incurrence of indebtedness by the limited
35 partnership other than in the ordinary course of its
36 business;

37 (iv) A change in the nature of the business;

38 (v) The admission or removal of a general partner;

39 (vi) The admission or removal of a limited partner;

40 (vii) A transaction involving an actual or potential
41 conflict of interest between a general partner and the
42 limited partnership or the limited partners;

43 (viii) An amendment to the partnership agreement or
44 certificate of limited partnership; or

45 (ix) Matters related to the business of the limited
46 partnership not otherwise enumerated in this subsection
47 (b), which the partnership agreement states in writing may
48 be subject to the approval or disapproval of limited
49 partners;

50 (7) Winding up the limited partnership pursuant to
51 section forty-six of this article; or

52 (8) Exercising any right or power permitted to limited
53 partners under this article and not specifically enumerated
54 in this subsection (b).

55 (c) The enumeration in subsection (b) of this section
56 does not mean that the possession or exercise of any other
57 powers by a limited partner constitutes participation by
58 him in the business of the limited partnership.

59 (d) A limited partner who knowingly permits his name
60 to be used in the name of the limited partnership, except
61 under circumstances permitted by subdivision (2), section

62 two of this article, is liable to creditors who extend credit to
63 the limited partnership without actual knowledge that the
64 limited partner is not a general partner.

§47-9-20. Person erroneously believing himself limited partner.

1 (a) Except as provided in subsection (b) of this section, a
2 person who makes a contribution to a business enterprise
3 and erroneously but in good faith believes that he has
4 become a limited partner in the enterprise is not a general
5 partner in the enterprise and is not bound by its obligations
6 by reason of making the contribution, receiving
7 distributions from the enterprise, or exercising any rights of
8 a limited partner, if, on ascertaining the mistake, he:

9 (1) Causes an appropriate certificate of limited
10 partnership or a certificate of amendment to be executed
11 and filed; or

12 (2) Withdraws from future equity participation in the
13 enterprise by executing and filing in the office of the
14 secretary of state a certificate declaring withdrawal under
15 this section.

16 (b) A person who makes a contribution of the kind
17 described in subsection (a) of this section, is liable as a
18 general partner to any third party who transacts business
19 with the enterprise (i) before the person withdraws and an
20 appropriate certificate is filed to show withdrawal, or (ii)
21 before an appropriate certificate is filed to show that he is
22 not a general partner, but in either case only if the third
23 party actually believed in good faith that the person was a
24 general partner at the time of the transaction.

§47-9-22. Admission of additional general partners.

1 After the filing of a limited partnership's original
2 certificate of limited partnership, additional general
3 partners may be admitted as provided in writing in the
4 partnership agreement or, if the partnership agreement
5 does not provide in writing for the admissions of additional
6 general partners, with the written consent of all partners.

§47-9-23. Events of withdrawal of general partner.

1 Except as approved by the specific written consent of all
2 partners at the time, a person ceases to be a general partner

3 of a limited partnership upon the happening of any of the
4 following events:

5 (1) The general partner withdraws from the limited
6 partnership as provided in section thirty-two of this article;

7 (2) The general partner ceases to be a member of the
8 limited partnership as provided in section forty of this
9 article;

10 (3) The general partner is removed as a general partner
11 in accordance with the partnership agreement;

12 (4) Unless otherwise provided for in writing in the
13 partnership agreement, the general partner (i) makes an
14 assignment for the benefit of creditors; (ii) files a voluntary
15 petition in bankruptcy; (iii) is adjudicated a bankrupt or
16 insolvent; (iv) files a petition or answer seeking for himself
17 any reorganization, arrangement, composition,
18 readjustment, liquidation, dissolution or similar relief
19 under any statute, law or regulation; (v) files an answer or
20 other pleading admitting or failing to contest the material
21 allegations of a petition filed against him in any proceeding
22 of this nature; or (vi) seeks, consents to, or acquiesces in the
23 appointment of a trustee, receiver or liquidator of the
24 general partner or of all or any substantial part of his
25 properties;

26 (5) Unless otherwise provided in writing in the
27 partnership agreement, one hundred twenty days after the
28 commencement of any proceeding against the general
29 partner seeking reorganization, arrangement, composition,
30 readjustment, liquidation, dissolution or similar relief
31 under any statute, law or regulation, the proceeding has not
32 been dismissed, or if within ninety days after the
33 appointment without his consent or acquiescence of a
34 trustee, receiver or liquidator of the general partner or of all
35 or any substantial part of his properties, the appointment is
36 not vacated or stayed or within ninety days after the
37 expiration of any such stay, the appointment is not vacated;

38 (6) In the case of a general partner who is a natural
39 person, (i) his death; or (ii) the entry by a court of competent
40 jurisdiction adjudicating him incompetent to manage his
41 person or his estate;

42 (7) In the case of a general partner who is acting as a
43 general partner by virtue of being a trustee of a trust, the
44 termination of the trust, but not merely the substitution of a

45 new trustee;

46 (8) In the case of a general partner that is a separate
47 partnership, the dissolution and commencement of winding
48 up of the separate partnership;

49 (9) In the case of a general partner that is a corporation,
50 the filing of a certificate of dissolution, or its equivalent, for
51 the corporation or the revocation of its charter; or

52 (10) In the case of an estate, the distribution by the
53 fiduciary of the estate's entire interest in the partnership.

§47-9-28. Liability for contribution.

1 (a) No promise by a limited partner to contribute to the
2 limited partnership is enforceable unless set out in a writing
3 signed by the limited partner.

4 (b) Except as provided in the partnership agreement, a
5 partner is obligated to the limited partnership to perform
6 any enforceable promise to contribute cash or property or to
7 perform services, even if he is unable to perform because of
8 death, disability or any other reason. If a partner does not
9 make the required contribution of property or services, he is
10 obligated at the option of the limited partnership to
11 contribute cash equal to the portion of the value, as stated in
12 the partnership records required to be kept by section five
13 of this article of the stated contribution that has not been
14 made.

15 (c) Unless otherwise provided in the partnership
16 agreement, the obligation of a partner to make a
17 contribution or return money or other property paid or
18 distributed in violation of this article may be compromised
19 only by consent of all the partners. Notwithstanding the
20 compromise, a creditor of a limited partnership who
21 extends credit or otherwise acts in reliance on that
22 obligation after the partner signs a writing which reflects
23 the obligation, and before the amendment or cancellation
24 thereof to reflect the compromise, may enforce the original
25 obligation.

§47-9-29. Sharing of profits and losses.

1 The profits and losses of a limited partnership shall be
2 allocated among the partners, and among classes of
3 partners, in the manner provided in writing in the
4 partnership agreement. If the partnership agreement does

5 not so provide in writing, profits and losses shall be
6 allocated on the basis of the value, as stated in the
7 partnership records required to be kept by section five of
8 this article, of the contributions made by each partner to the
9 extent they have been received by the partnership and have
10 not been returned.

§47-9-30. Sharing of distributions.

1 Distributions of cash or other assets of a limited
2 partnership shall be allocated among the partners and
3 classes of partners in the manner provided in the
4 partnership agreement. If the partnership agreement does
5 not so provide, distributions shall be made on the basis of
6 the value, as stated in the partnership records required to be
7 kept by section five of this article, of the contributions made
8 by each partner to the extent they have been received by the
9 partnership and have not been returned.

§47-9-31. Interim distributions.

1 Except as provided in this article, a partner is entitled to
2 receive distributions from a limited partnership before his
3 withdrawal from the limited partnership and before the
4 dissolution and winding up thereof to the extent and at the
5 times or upon the happening of the events specified in the
6 partnership agreement.

§47-9-33. Withdrawal of limited partner.

1 A limited partner may withdraw from a limited
2 partnership at the time or upon the happening of events
3 specified in writing in the partnership agreement. If the
4 agreement does not specify in writing the time or the events
5 upon the happening of which a limited partner may
6 withdraw or a definite time for the dissolution and winding
7 up of the limited partnership, a limited partner may
8 withdraw upon not less than six months' prior written
9 notice to each general partner at his address on the books of
10 the limited partnership at its office in this state.

§47-9-35. Distribution in kind.

1 Except as provided in writing in the partnership
2 agreement, a partner, regardless of the nature of his
3 contribution, has no right to demand and receive any

4 distribution from a limited partnership in any form other
5 than cash. Except as provided in writing in the partnership
6 agreement, a partner may not be compelled to accept a
7 distribution of any asset in kind from a limited partnership
8 to the extent that the percentage of the asset distributed to
9 him exceeds a percentage of that asset which is equal to the
10 percentage in which he shares in distributions from the
11 limited partnership.

§47-9-38. Liability upon return of contribution.

1 (a) If a partner has received the return of any part of his
2 contribution without violation of the partnership
3 agreement or this article, he is liable to the limited
4 partnership for a period of one year thereafter for the
5 amount of the returned contribution, but only to the extent
6 necessary to discharge the limited partnership's liabilities
7 to creditors who extended credit to the limited partnership
8 during the period the contribution was held by the
9 partnership.

10 (b) If a partner has received the return of any part of his
11 contribution in violation of the partnership agreement or
12 this article, he is liable to the limited partnership for a
13 period of six years thereafter for the amount of the
14 contribution wrongfully returned.

15 (c) A partner receives a return of his contribution to the
16 extent that a distribution to him reduces his share of the fair
17 value of the net assets of the limited partnership below the
18 value, as set forth in the records required to be kept by
19 section five of this article, of his contribution which has not
20 been distributed to him.

§47-9-42. Right of assignee to become limited partner.

1 (a) An assignee of a partnership interest, including an
2 assignee of a general partner, may become a limited partner
3 if and to the extent that (1) the assignor gives the assignee
4 that right in accordance with authority described in the
5 partnership agreement, or (2) all other partners consent.

6 (b) An assignee who has become a limited partner has,
7 to the extent assigned, the rights and powers, and is subject
8 to the restrictions and liabilities, of a limited partner under
9 the partnership agreement and this article. An assignee who
10 becomes a limited partner also is liable for the obligations

11 of his assignor to make and return contributions as
12 provided in section thirty-eight of this article: *Provided*,
13 That the assignee is not obligated for liabilities unknown to
14 the assignee at the time he became a limited partner.

15 (c) If an assignee of a partnership interest becomes a
16 limited partner, the assignor is not released from his
17 liability to the limited partnership under sections fourteen
18 and twenty-eight of this article.

§47-9-44. Nonjudicial dissolution.

1 A limited partnership is dissolved and its affairs shall be
2 wound up upon the happening of the first to occur of the
3 following:

4 (1) At the time or upon the happening of events specified
5 in the certificate of limited partnership;

6 (2) Upon the happening of events specified in writing in
7 the partnership agreement;

8 (3) The written consent of all partners;

9 (4) An event of withdrawal of a general partner, unless
10 at the time there is at least one other general partner and the
11 written provisions of the partnership agreement permit the
12 business of the limited partnership to be carried on by the
13 remaining general partner and that partner does so, but the
14 limited partnership is not dissolved and is not required to be
15 wound up by reason of any event of withdrawal if, within
16 ninety days after the withdrawal, all partners agree in
17 writing to continue the business of the limited partnership
18 and to the appointment of one or more additional general
19 partners if necessary or desired; or

20 (5) Entry of a decree of judicial dissolution under
21 section forty-five of this article.

§47-9-49. Registration of foreign limited partnership.

1 Before transacting business in this state, a foreign limited
2 partnership shall register with the secretary of state. In
3 order to register, a foreign limited partnership shall submit
4 to the secretary of state, in duplicate, an application for
5 registration as a foreign limited partnership, signed and
6 sworn to by a general partner and setting forth:

7 (1) The name of the foreign limited partnership and, if
8 different, the name under which it proposes to register and
9 transact business in this state;

- 10 (2) The state and date of its formation;
- 11 (3) The name and address of any agent for service of
12 process on the foreign limited partnership whom the
13 foreign limited partnership elects to appoint: *Provided*,
14 That the agent must be an individual resident of this state, a
15 domestic corporation, or a foreign corporation having a
16 place of business in and authorized to do business in this
17 state;
- 18 (4) A statement that the secretary of state is appointed
19 the agent of the foreign limited partnership for service of
20 process if no agent has been appointed under subdivision (3)
21 of this section or, if appointed, the agent's authority has
22 been revoked or if the agent cannot be found or served with
23 the exercise of reasonable diligence;
- 24 (5) The address of the office required to be maintained
25 in the state of its organization by the laws of that state or, if
26 not so required, of the principal office of the foreign limited
27 partnership;
- 28 (6) The name and business address of each general
29 partner; and
- 30 (7) The address of the office at which is kept a list of the
31 names and addresses of the limited partners and their
32 capital contributions, together with an undertaking by the
33 foreign limited partnership to keep those records until the
34 foreign limited partnership's registration in this state is
35 canceled or withdrawn.

**§47-9-50. Issuance of registration; filing in the office of the
clerk of the county commission.**

- 1 (a) If the secretary of state finds that an application for
2 registration conforms to law and all requisite fees have been
3 paid, he shall:
- 4 (1) Endorse on the application the word "Filed," and the
5 month, day and year of the filing thereof;
- 6 (2) File in his office a duplicate original of the
7 application; and
- 8 (3) Issue a certificate of registration to transact business
9 in this state.
- 10 (b) The certificate of registration, together with a
11 duplicate original of the application, shall be returned to
12 the person who filed the application or his representative.
- 13 (c) The certificate of registration, or a duly certified

14 copy thereof, shall be recorded in the office of the clerk of
15 the county commission of the county where the principal
16 office of the limited partnership in this state is located. If
17 such limited partnership does not maintain a principal
18 office in this state, the recordation may be completed in any
19 county in which the limited partnership is conducting its
20 affairs or doing or transacting business.

21 This filing, or failure to file, shall in no way affect the
22 formation of the limited partnership. Only the filing in the
23 office of the secretary of state, required by section eight of
24 this article, shall determine the validity of the limited
25 partnership.

CHAPTER 168

(S. B. 101—By Senators Sharpe, Cook, Palumbo, Colombo, Fanning, Burdette
and Shaw)

[Passed March 6, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two, relating to enacting the uniform trade secrets act; providing for definitions; allowing injunctive relief; prescribing measure of damages; allowing award of attorney's fees; requiring court to protect secrecy; statute of limitations; clarifying effect on other law; application of article and effective date.

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 twenty-two, to read as follows:

ARTICLE 22. UNIFORM TRADE SECRETS ACT.

- §47-22-1. Definitions.
- §47-22-2. Injunctive relief.
- §47-22-3. Damages.
- §47-22-4. Attorney's fees.
- §47-22-5. Preservation of secrecy.

- §47-22-6. Statute of limitations.
- §47-22-7. Effect on other law.
- §47-22-8. Uniformity of application and construction.
- §47-22-9. Short title.
- §47-22-10. Time of taking effect.

§47-22-1. Definitions.

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

3 (a) "Improper means" includes theft, bribery, mis-
4 representation, breach or inducement of a breach of a
5 duty to maintain secrecy or espionage through electronic
6 or other means.

7 (b) "Misappropriation" means:

8 (1) Acquisition of a trade secret of another by a per-
9 son who knows or has reason to know that the trade
10 secret was acquired by improper means; or

11 (2) Disclosure or use of another person's trade secret
12 without the other's express or implied consent by a per-
13 son who:

14 (A) Used improper means to acquire knowledge of the
15 trade secret; or

16 (B) At the time of disclosure or use, knew or had
17 reason to know that his knowledge of the trade secret
18 was:

19 (i) Derived from or through a person who had utilized
20 improper means to acquire it; or

21 (ii) Acquired under circumstances giving rise to a duty
22 to maintain its secrecy or limit its use; or

23 (iii) Derived from or through a person who owed a
24 duty to the person seeking relief to maintain its secrecy
25 or limit its use; or

26 (C) Before a material change of his position, knew or
27 had reason to know that the information was a trade
28 secret and that knowledge of it had been acquired by
29 accident or mistake.

30 (c) "Person" means a natural person, corporation,
31 business trust, estate, trust, partnership, association, joint

32 venture, government, governmental subdivision or agen-
33 cy or any other legal or commercial entity.

34 (d) "Trade secret" means information, including, but
35 not limited to, a formula, pattern, compilation, program,
36 device, method, technique or process, that:

37 (1) Derives independent economic value, actual or
38 potential, from not being generally known to, and not
39 being readily ascertainable by proper means by, other
40 persons who can obtain economic value from its disclo-
41 sure or use; and

42 (2) Is the subject of efforts that are reasonable under
43 the circumstances to maintain its secrecy.

§47-22-2. Injunctive relief.

1 (a) Actual or threatened misappropriation may be
2 enjoined. Upon application to the court, an injunction
3 shall be terminated when the trade secret has ceased to
4 exist, but the injunction may be continued for an addi-
5 tional reasonable period of time in order to eliminate
6 commercial advantage that otherwise would be derived
7 from the misappropriation.

8 (b) In exceptional circumstances, an injunction may
9 condition future use upon payment of a reasonable royalti-
10 ty for no longer than the period of time for which the
11 use could have been prohibited. Exceptional circum-
12 stances include, but are not limited to, a material and
13 prejudicial change of position prior to acquiring knowl-
14 edge or reason to know of a misappropriation that renders
15 a prohibitive injunction inequitable.

16 (c) In appropriate circumstances, affirmative acts to
17 protect a trade secret may be compelled by court order.

§47-22-3. Damages.

1 (a) Except to the extent that a material and prejudicial
2 change of position prior to acquiring knowledge or reason
3 to know of misappropriation renders a monetary recovery
4 inequitable, a complainant is entitled to recover damages
5 for misappropriation. Damages may include both the
6 actual loss caused by the misappropriation and the unjust
7 enrichment caused by the misappropriation. In lieu of

8 damages measured by any other methods, the damages
9 caused by misappropriation may be measured by imposi-
10 tion of liability for a reasonable royalty for a misappro-
11 priator's unauthorized disclosure or use of a trade secret.

12 (b) If willful and malicious misappropriation occurs,
13 the court may award exemplary damages in an amount
14 not exceeding twice any award made under subsection
15 (a) of this section.

§47-22-4. Attorney's fees.

1 If (a) a claim of misappropriation is made in bad faith,
2 or (b) a motion to terminate an injunction is made or
3 resisted in bad faith, or (c) willful and malicious mis-
4 appropriation occurs, the court may award reasonable
5 attorney's fees to the prevailing party.

§47-22-5. Preservation of secrecy.

1 In an action brought pursuant to this article, a court
2 shall preserve the secrecy of an alleged trade secret by
3 reasonable means, which may include granting protective
4 orders in connection with discovery proceedings, holding
5 in camera hearings, sealing the records of the action and
6 ordering any person involved in the litigation not to dis-
7 close an alleged trade secret without prior court approval.

§47-22-6. Statute of limitations.

1 An action for misappropriation must be brought within
2 three years after the misappropriation is discovered or,
3 by the exercise of reasonable diligence, should have been
4 discovered. For the purposes of this section, a continuing
5 misappropriation constitutes a single claim.

§47-22-7. Effect on other law.

1 (a) Except as provided in subsection (b) of this section
2 this article displaces conflicting tort, restitutionary and
3 other law of this state providing civil remedies for mis-
4 appropriation of a trade secret.

5 (b) This article does not affect:

6 (1) Contractual remedies, whether or not based upon
7 misappropriation of a trade secret;

8 (2) Other civil remedies that are not based upon mis-

- 9 appropriation of a trade secret; or
10 (3) Criminal remedies, whether or not based upon
11 misappropriation of a trade secret.

§47-22-8. Uniformity of application and construction.

- 1 This article shall be applied and construed to effectu-
2 ate its general purpose to make uniform the law with
3 respect to the subject of this act among states enacting it.

§47-22-9. Short title.

- 1 This article may be cited as the "Uniform Trade Secrets
2 Act."

§47-22-10. Time of taking effect.

- 1 This article takes effect on the first day of July, one
2 thousand nine hundred eighty-six, and does not apply to
3 misappropriations occurring prior to the effective date or
4 to misappropriations which began prior to the effective
5 date and continue past the effective date.

CHAPTER 169

(S. B. 104—By Senators Sharpe, Cook, Palumbo, Colombo, Fanning, Burdette and Shaw)

[Passed March 8, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact article seven, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enacting the Uniform Transfers to Minors Act; providing for nomination of a custodian; methods of transfer; manner of creating custodial property; care and use of custodial property; powers and liability of custodian; exemptions from liability; removal of custodian; applicability to present gifts; and effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. UNIFORM TRANSFERS TO MINORS ACT.

- §36-7-1. Definitions.
- §36-7-2. Scope and jurisdiction.
- §36-7-3. Nomination of custodian.
- §36-7-4. Transfer by gift or exercise of power of appointment.
- §36-7-5. Transfer authorized by will or trust.
- §36-7-6. Other transfer by fiduciary.
- §36-7-7. Transfer by obligor.
- §36-7-8. Receipt for custodial property.
- §36-7-9. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.
- §36-7-10. Single custodianship.
- §36-7-11. Validity and effect of transfer.
- §36-7-12. Care of custodial property.
- §36-7-13. Powers of custodian.
- §36-7-14. Use of custodial property.
- §36-7-15. Custodian's expenses, compensation and bond.
- §36-7-16. Exemption of third person from liability.
- §36-7-17. Liability to third persons.
- §36-7-18. Renunciation, resignation, death or removal of custodian; designation of successor custodian.
- §36-7-19. Accounting by and determination of liability of custodian.
- §36-7-20. Termination of custodianship.
- §36-7-21. Applicability.
- §36-7-22. Effect on existing custodianships.
- §36-7-23. Uniformity of application and construction.
- §36-7-24. Short title.

§36-7-1. Definitions.

1 In this article:

2 (1) "Adult" means an individual who has attained the
3 age of twenty-one years.

4 (2) "Benefit plan" means an employer's plan for the
5 benefit of an employee or partner.

6 (3) "Broker" means a person lawfully engaged in the
7 business of effecting transactions in securities or
8 commodities for the person's own account or for the
9 account of others.

10 (4) "Conservator" means a person appointed or
11 qualified by a court to act as general, limited or temporary
12 guardian of a minor's property or a person legally
13 authorized to perform substantially the same functions.

14 (5) "Court" means any circuit court.

15 (6) "Custodial property" means (i) any interest in
16 property transferred to a custodian under this article and
17 (ii) the income from and proceeds of that interest in

18 property.

19 (7) "Custodian" means a person so designated under
20 section nine or a successor or substitute custodian
21 designated under section eighteen of this article.

22 (8) "Financial institution" means a bank, trust
23 company, savings institution or credit union, chartered and
24 supervised under state or federal law.

25 (9) "Legal representative" means the personal
26 representative or conservator of an individual.

27 (10) "Member of the minor's family" means the minor's
28 parent, stepparent, spouse, grandparent, brother, sister,
29 uncle or aunt, whether of the whole or half blood or by
30 adoption.

31 (11) "Minor" means an individual who has not attained
32 the age of twenty-one years.

33 (12) "Person" means an individual, corporation,
34 organization or other legal entity.

35 (13) "Personal representative" means an executor,
36 administrator, successor, personal representative or special
37 administrator of a decedent's estate or a person legally
38 authorized to perform substantially the same functions.

39 (14) "State" includes any state of the United States, the
40 District of Columbia, the Commonwealth of Puerto Rico
41 and any territory or possession subject to the legislative
42 authority of the United States.

43 (15) "Transfer" means a transaction that creates
44 custodial property under section nine of this article.

45 (16) "Transferor" means a person who makes a transfer
46 under this article.

47 (17) "Trust company" means a financial institution,
48 corporation or other legal entity authorized to exercise
49 general trust powers.

§36-7-2. Scope and jurisdiction.

1 (a) This article applies to a transfer that refers to this
2 article in the designation under subsection (a), section nine,
3 by which the transfer is made if at the time of the transfer,
4 the transferor, the minor or the custodian is a resident of
5 this state or the custodial property is located in this state.
6 The custodianship so created remains subject to this article
7 despite a subsequent change in residence of a transferor, the
8 minor or the custodian, or the removal of custodial property

9 from this state.

10 (b) A person designated as custodian under this article
11 is subject to personal jurisdiction in this state with respect
12 to any matter relating to the custodianship.

13 (c) A transfer that purports to be made and which is
14 valid under the Uniform Transfers to Minors Act, the
15 Uniform Gifts to Minors Act or a substantially similar act of
16 another state is governed by the law of the designated state
17 and may be executed and is enforceable in this state if at the
18 time of the transfer, the transferor, the minor or the
19 custodian is a resident of the designated state or the
20 custodial property is located in the designated state.

§36-7-3. Nomination of custodian.

1 (a) A person having the right to designate the recipient
2 of property transferable upon the occurrence of a future
3 event may revocably nominate a custodian to receive the
4 property for a minor beneficiary upon the occurrence of the
5 event by naming the custodian followed in substance by the
6 words: "As custodian for (name of minor)
7 under the Uniform Transfers to Minors Act." The
8 nomination may name one or more persons as substitute
9 custodians to whom the property must be transferred, in the
10 order named, if the first nominated custodian dies before
11 the transfer or is unable, declines or is ineligible to serve.
12 The nomination may be made in a will, a trust, a deed, an
13 instrument exercising a power of appointment or in a
14 writing designating a beneficiary of contractual rights
15 which is registered with or delivered to the payor, issuer or
16 other obligor of the contractual rights.

17 (b) A custodian nominated under this section must be a
18 person to whom a transfer of property of that kind may be
19 made under subsection (a), section nine of this article.

20 (c) The nomination of a custodian under this section
21 does not create custodial property until the nominating
22 instrument becomes irrevocable or a transfer to the
23 nominated custodian is completed under section nine of this
24 article. Unless the nomination of a custodian has been
25 revoked, upon the occurrence of the future event the
26 custodianship becomes effective and the custodian shall
27 enforce a transfer of the custodial property pursuant to
28 section nine of this article.

§36-7-4. Transfer by gift or exercise of power of appointment.

1 A person may make a transfer by irrevocable gift to, or the
2 irrevocable exercise of a power of appointment in favor of, a
3 custodian for the benefit of a minor pursuant to section nine
4 of this article.

§36-7-5. Transfer authorized by will or trust.

1 (a) A personal representative or trustee may make an
2 irrevocable transfer pursuant to section nine of this article
3 to a custodian for the benefit of a minor as authorized in the
4 governing will or trust.

5 (b) If the testator or settlor has nominated a custodian
6 under section three of this article to receive the custodial
7 property, the transfer must be made to that person.

8 (c) If the testator or settlor has not nominated a
9 custodian under section three of this article or all persons so
10 nominated as custodian die before the transfer or are
11 unable, decline or are ineligible to serve, the personal
12 representative or the trustee, as the case may be, shall
13 designate the custodian from among those eligible to serve
14 as custodian for property of that kind under subsection (a),
15 section nine of this article.

§36-7-6. Other transfer by fiduciary.

1 (a) Subject to subsection (c), a personal representative
2 or trustee may make an irrevocable transfer to another
3 adult or trust company as custodian for the benefit of a
4 minor pursuant to section nine of this article in the absence
5 of a will or under a will or trust that does not contain an
6 authorization to do so.

7 (b) Subject to subsection (c), a conservator may make an
8 irrevocable transfer to another adult or trust company as
9 custodian for the benefit of the minor pursuant to section
10 nine of this article.

11 (c) A transfer under subsection (a) or (b) may be made
12 only if (i) the personal representative, trustee or conservator
13 considers the transfer to be in the best interest of the minor,
14 (ii) the transfer is not prohibited by or inconsistent with
15 provisions of the applicable will, trust agreement or other
16 governing instrument and (iii) the transfer is authorized by
17 the court if it exceeds ten thousand dollars in value.

§36-7-7. Transfer by obligor.

1 (a) Subject to subsections (b) and (c) of this section, a
2 person not subject to section five or six of this article who
3 holds property of or owes a liquidated debt to a minor not
4 having a conservator may make an irrevocable transfer to a
5 custodian for the benefit of the minor pursuant to section
6 nine of this article.

7 (b) If a person having the right to do so under section
8 three of this article has nominated a custodian under that
9 section to receive the custodial property, the transfer must
10 be made to that person.

11 (c) If no custodian has been nominated under section
12 three of this article, or all persons so nominated as
13 custodian die before the transfer or are unable, decline or
14 are ineligible to serve, a transfer under this section may be
15 made to an adult member of the minor's family or to a trust
16 company unless the property exceeds ten thousand dollars
17 in value.

§36-7-8. Receipt for custodial property.

1 A written acknowledgement of delivery by a custodian
2 constitutes a sufficient receipt and discharge for custodial
3 property transferred to the custodian pursuant to this
4 article.

§36-7-9. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

1 (a) Custodial property is created and a transfer is made
2 whenever:

3 (1) An uncertificated security or a certificated security
4 in registered form is either:

5 (i) Registered in the name of the transferor or an adult
6 other than the transferor or a trust company, followed in
7 substance by the words: "As custodian for
8 (name of minor) under the West Virginia Uniform Transfers
9 to Minors Act"; or

10 (ii) Delivered if in certificated form, or any document
11 necessary for the transfer of an uncertificated security is
12 delivered, together with any necessary endorsement to an
13 adult other than the transferor or to a trust company as
14 custodian, accompanied by an instrument in substantially
15 the form set forth in subsection (b).

16 (2) Money is paid or delivered to a broker or financial
17 institution for credit to an account in the name of the
18 transferor or an adult other than the transferor or a trust
19 company, followed in substance by the words: "As
20 custodian for (name of minor) under the
21 West Virginia Uniform Transfers to Minors Act."

22 (3) The ownership of a life or endowment insurance
23 policy or annuity contract is either:

24 (i) Registered with the issuer in the name of the
25 transferor or an adult other than the transferor or a trust
26 company, followed in substance by the words: "As
27 custodian for (name of minor) under the
28 West Virginia Uniform Transfers to Minors Act"; or

29 (ii) Assigned in a writing delivered to an adult other
30 than the transferor or to a trust company whose name in the
31 assignment is followed in substance by the words: "As
32 custodian for (name of minor) under the
33 West Virginia Uniform Transfers to Minors Act."

34 (4) An irrevocable exercise of a power of appointment or
35 an irrevocable present right to future payment under a
36 contract is the subject of a written notification delivered to
37 the payor, issuer or other obligor that the right is
38 transferred to the transferor or an adult other than the
39 transferor or a trust company, whose name in the
40 notification is followed in substance by the words: "As
41 custodian for (name of minor) under the
42 West Virginia Uniform Transfers to Minors Act."

43 (5) An interest in real property is recorded in the name
44 of the transferor or an adult other than the transferor or a
45 trust company, followed in substance by the words: "As
46 custodian for (name of minor) under the
47 West Virginia Uniform Transfers to Minors Act."

48 (6) A certificate of title issued by a department or
49 agency of a state or of the United States which evidences
50 title to tangible personal property is either:

51 (i) Issued in the name of the transferor or an adult other
52 than the transferor or a trust company, followed in
53 substance by the words: "As custodian for
54 (name of minor) under the West Virginia Uniform Transfers
55 to Minors Act"; or

56 (ii) Delivered to an adult other than the transferor or to
57 a trust company, endorsed to that person followed in

58 substance by the words: "As custodian for
59 (name of minor) under the West Virginia Uniform Transfers
60 to Minors Act"; or

61 (7) An interest in any property not described in
62 subdivisions (1) through (6) is transferred to an adult other
63 than the transferor or to a trust company by a written
64 instrument in substantially the form set forth in subsection
65 (b).

66 (b) An instrument in the following form satisfies the
67 requirements of paragraph (ii), subdivision (1) and
68 subdivision (7) of subsection (a):

69 "TRANSFER UNDER THE WEST VIRGINIA
70 UNIFORM TRANSFERS TO MINORS ACT

71 I, (name of transferor or name and
72 representative capacity if a fiduciary) hereby transfer to
73 (name of Custodian), as Custodian for
74 (name of minor) under the
75 West Virginia Uniform Transfers to Minors Act, the
76 following: (Insert a description of the custodial property
77 sufficient to identify it).

78 Dated:

79

80 (Signature)

81 (name of custodian) acknowledges receipt
82 of the property described above as custodian for the minor
83 named above under the West Virginia Uniform Transfers to
84 Minors Act.

85 Dated:

86"

87 (Signature of Custodian)

88 (c) A transferor shall place the custodian in control of
89 the custodial property as soon as practicable.

§36-7-10. Single custodianship.

1 A transfer may be made only for one minor, and only one
2 person may be the custodian. All custodial property held
3 under this article by the same custodian for the benefit of
4 the same minor constitutes a single custodianship.

§36-7-11. Validity and effect of transfer.

1 (a) The validity of a transfer made in a manner
2 prescribed in this article is not affected by:

3 (1) Failure of the transferor to comply with subsection
4 (c), section nine, concerning possession and control;

5 (2) Designation of an ineligible custodian, except
6 designation of the transferor in the case of property for
7 which the transferor is ineligible to serve as custodian
8 under subsection (a), section nine; or

9 (3) Death or incapacity of a person nominated under
10 section three or designated under section nine as custodian
11 or the disclaimer of the office by that person.

12 (b) A transfer made pursuant to section nine is
13 irrevocable, and the custodial property is indefeasibly
14 vested in the minor, but the custodian has all the rights,
15 powers, duties and authority provided in this article and
16 neither the minor nor the minor's legal representative has
17 any right, power, duty or authority with respect to the
18 custodial property except as provided in this article.

19 (c) By making a transfer, the transferor incorporates in
20 the disposition all the provisions of this article and grants to
21 the custodian, and to any third person dealing with a person
22 designated as custodian, the respective powers, rights and
23 immunities provided in this article.

§36-7-12. Care of custodial property.

1 (a) A custodian shall:

2 (1) Take control of custodial property;

3 (2) Register or record title to custodial property if
4 appropriate; and

5 (3) Collect, hold, manage, invest and reinvest custodial
6 property.

7 (b) In dealing with custodial property, a custodian shall
8 observe the standard of care that would be observed by a
9 prudent person dealing with property of another and is not
10 limited by any other statute restricting investments by
11 fiduciaries. If a custodian has a special skill or expertise or
12 is named custodian on the basis of representations of a
13 special skill or expertise, the custodian shall use that skill or
14 expertise. However, a custodian, in the custodian's
15 discretion and without liability to the minor or the minor's
16 estate, may retain any custodial property received from a
17 transferor.

18 (c) A custodian may invest in or pay premiums on life
19 insurance or endowment policies on (i) the life of the minor

20 only if the minor or the minor's estate is the sole beneficiary,
 21 or (ii) the life of another person in whom the minor has an
 22 insurable interest only to the extent that the minor, the
 23 minor's estate or the custodian in the capacity of custodian,
 24 is the irrevocable beneficiary.

25 (d) A custodian at all times shall keep custodial
 26 property separate and distinct from all other property in a
 27 manner sufficient to identify it clearly as custodial property
 28 of the minor. Custodial property consisting of an undivided
 29 interest is so identified if the minor's interest is held as a
 30 tenant in common and is fixed. Custodial property subject
 31 to recordation is so identified if it is recorded, and custodial
 32 property subject to registration is so identified if it is either
 33 registered, or held in an account designated, in the name of
 34 the custodian, followed in substance by the words: "As a
 35 custodian for (name of minor) under the
 36 West Virginia Uniform Transfers to Minors Act."

37 (e) A custodian shall keep records of all transactions
 38 with respect to custodial property, including information
 39 necessary for the preparation of the minor's tax returns,
 40 and shall make them available for inspection at reasonable
 41 intervals by a parent or legal representative of the minor or
 42 by the minor if the minor has attained the age of fourteen
 43 years.

§36-7-13. Powers of custodian.

1 (a) A custodian, acting in a custodial capacity, has all
 2 the rights, powers and authority over custodial property
 3 that unmarried adult owners have over their own property,
 4 but a custodian may exercise those rights, powers and
 5 authority in that capacity only.

6 (b) This section does not relieve a custodian from
 7 liability for breach of section twelve of this article.

§36-7-14. Use of custodial property.

1 (a) A custodian may deliver or pay to the minor or
 2 expend for the minor's benefit so much of the custodial
 3 property as the custodian considers advisable for the use
 4 and benefit of the minor, without court order and without
 5 regard to (i) the duty or ability of the custodian personally
 6 or of any other person to support the minor, or (ii) any other
 7 income or property of the minor which may be applicable or

8 available for that purpose.

9 (b) On petition of an interested person or the minor if
10 the minor has attained the age of fourteen years, the court
11 may order the custodian to deliver or pay to the minor or
12 expend for the minor's benefit so much of the custodial
13 property as the court considers advisable for the use and
14 benefit of the minor.

15 (c) A delivery, payment or expenditure under this
16 section is in addition to, not in substitution for, and does not
17 affect any obligation of a person to support the minor.

§36-7-15. Custodian's expenses, compensation and bond.

1 (a) A custodian is entitled to reimbursement from
2 custodial property for reasonable expenses incurred in the
3 performance of the custodian's duties.

4 (b) Except for one who is a transferor under section four
5 of this article, a custodian has a noncumulative election
6 during each calendar year to charge reasonable
7 compensation for services performed during that year.

8 (c) Except as provided in subsection (f), section eighteen
9 of this article, a custodian need not give a bond.

§36-7-16. Exemption of third person from liability.

1 A third person in good faith and without court order may
2 act on the instructions of or otherwise deal with any person
3 purporting to make a transfer or purporting to act in the
4 capacity of a custodian and, in the absence of knowledge, is
5 not responsible for determining:

6 (1) The validity of the purported custodian's
7 designation;

8 (2) The propriety of, or the authority under this article
9 for, any act of the purported custodian;

10 (3) The validity or propriety under this article of any
11 instrument or instructions executed or given either by the
12 person purporting to make a transfer or by the purported
13 custodian; or

14 (4) The propriety of the application of any property of
15 the minor delivered to the purported custodian.

§36-7-17. Liability to third persons.

1 (a) A claim based on (i) a contract entered into by a
2 custodian acting in a custodial capacity, (ii) an obligation

3 arising from the ownership or control of custodial property
4 or (iii) a tort committed during the custodianship, may be
5 asserted against the custodial property by proceeding
6 against the custodian in the custodial capacity, whether or
7 not the custodian or the minor is personally liable therefor.

8 (b) A custodian is not personally liable:

9 (1) On a contract properly entered into in the custodial
10 capacity unless the custodian fails to reveal that capacity
11 and to identify the custodianship in the contract; or

12 (2) For an obligation arising from control of custodial
13 property or for a tort committed during the custodianship
14 unless the custodian is personally at fault.

15 (c) A minor is not personally liable for an obligation
16 arising from ownership of custodial property or for a tort
17 committed during the custodianship unless the minor is
18 personally at fault.

**§36-7-18. Renunciation, resignation, death or removal of
custodian; designation of successor custodian.**

1 (a) A person nominated under section three of this
2 article or designated under section nine of this article as
3 custodian may decline to serve by delivering a valid
4 disclaimer to the person who made the nomination or to the
5 transferor or the transferor's legal representative. If the
6 event giving rise to a transfer has not occurred and no
7 substitute custodian able, willing and eligible to serve was
8 nominated under section three of this article, the person
9 who made the nomination may nominate a substitute
10 custodian under section three of this article; otherwise the
11 transferor or the transferor's legal representative shall
12 designate a substitute custodian at the time of the transfer,
13 in either case from among the persons eligible to serve as
14 custodian for that kind of property under subsection (a),
15 section nine. The custodian so designated has the rights of a
16 successor custodian.

17 (b) A custodian at any time may designate a trust
18 company or an adult other than a transferor under section
19 four as successor custodian by executing and dating an
20 instrument of designation before a subscribing witness
21 other than the successor. If the instrument of designation
22 does not contain or is not accompanied by the resignation of
23 the custodian, the designation of the successor does not take

24 effect until the custodian resigns, dies, becomes
25 incapacitated or is removed.

26 (c) A custodian may resign at any time by delivering
27 written notice to the minor if the minor has attained the age
28 of fourteen years and to the successor custodian and by
29 delivering the custodial property to the successor
30 custodian.

31 (d) If a custodian is ineligible, dies or becomes
32 incapacitated without having effectively designated a
33 successor and the minor has attained the age of fourteen
34 years, the minor may designate as successor custodian, in
35 the manner prescribed in subsection (b) of this section an
36 adult member of the minor's family, a conservator of the
37 minor or a trust company. If the minor has not attained the
38 age of fourteen years or fails to act within sixty days after
39 the ineligibility, death or incapacity, the conservator of the
40 minor becomes successor custodian. If the minor has no
41 conservator or the conservator declines to act, the
42 transferor, the legal representative of the transferor or of
43 the custodian, an adult member of the minor's family or any
44 other interested person may petition the court to designate
45 a successor custodian.

46 (e) A custodian who declines to serve under subsection
47 (a) of this section or resigns under subsection (c) of this
48 section or the legal representative of a deceased or
49 incapacitated custodian, as soon as practicable, shall put
50 the custodial property and records in the possession and
51 control of the successor custodian. The successor custodian
52 by action may enforce the obligation to deliver custodial
53 property and records and becomes responsible for each item
54 as received.

55 (f) A transferor, the legal representative of a transferor,
56 an adult member of the minor's family, a guardian of the
57 person of the minor, the conservator of the minor or the
58 minor if the minor has attained the age of fourteen years
59 may petition the court to remove the custodian for cause
60 and to designate a successor custodian other than a
61 transferor under section four or to require the custodian to
62 give appropriate bond.

**§36-7-19. Accounting by and determination of liability of
custodian.**

1 (a) A minor who has attained the age of fourteen years,

thirty-one, as amended; and to amend and reenact section one of said article, relating generally to the venue of civil actions and other proceedings; providing that an action may be brought in either the county where any of the defendants reside or in the county wherein the cause of action arose; and allowing a change of venue from counties wherein the cause of action arose upon certain showings by a party.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one of said article one be amended and reenacted, all to read as follows:

ARTICLE 1. VENUE.

§56-1-1. Venue generally.

1 (a) Any civil action or other proceeding, except where
2 it is otherwise specially provided, may hereafter be
3 brought in the circuit court of any county:

4 (1) Wherein any of the defendants may reside or the
5 cause of action arose, except that an action of ejection
6 or unlawful detainer must be brought in the county
7 wherein the land sought to be recovered or some part
8 thereof, is; or

9 (2) If a corporation be a defendant, wherein its
10 principal office is, or wherein its mayor, president or
11 other chief officer resides; or if its principal office be
12 not in this state, and its mayor, president or other chief
13 officer do not reside therein, wherein it does business;
14 or if it be a corporation organized under the laws of this
15 state, which has its principal office located outside of
16 this state, and which has no office or place of business
17 within the state, the circuit court of the county in which
18 the plaintiff resides or the circuit court of the county in
19 which the seat of state government is located shall have
20 jurisdiction of all actions at law or suits in equity
21 against such corporation, where the cause of action arose
22 in this state or grew out of the rights of stockholders
23 with respect to corporate management; or

24 (3) If it be to recover land or subject it to a debt,
25 wherein such land or any part thereof may be; or

26 (4) If it be against one or more nonresidents of the
27 state, wherein any one of them may be found and served
28 with process, or may have estate or debts due him or
29 them; or

30 (5) If it be to recover a loss under any policy of
31 insurance, upon either property, life or health, or
32 against injury to a person, wherein the property insured
33 was situated either at the date of the policy or at the
34 time when the right of action accrued; or the person
35 insured had a legal residence at the date of his death
36 or at the time when the right of action accrued; or

37 (6) If it be on behalf of the state in the name of the
38 attorney general or otherwise, wherein the seat of
39 government is; or

40 (7) If a judge of a circuit be interested in a case which,
41 but for such interest, would be proper for the jurisdic-
42 tion of his court, the action or suit may be brought in
43 any county in an adjoining circuit.

44 (b) Whenever a civil action or proceeding is brought
45 in the county wherein the cause of action arose, under
46 the provisions of subsection (a) of this section, if no
47 defendant resides in such county, a defendant to the
48 action or proceeding may move the court before which
49 the action is pending for a change of venue to a county
50 wherein one or more of the defendants resides, and upon
51 a showing by the moving defendant that the county to
52 which the proposed change of venue would be made
53 would better afford convenience to the parties litigant
54 and the witnesses likely to be called, and if the ends of
55 justice would be better served by such change of venue,
56 the court may grant such motion.

CHAPTER 171

(H. B. 2179—By Delegate Chambers and Delegate Damron)

[Passed March 7, 1986: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a, one-b and

five, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one-c, one-d, four, six, seven-a, eight-c, nine-b, fifteen, fifteen-b, article four of said chapter; and to further amend said article four by adding thereto three new sections, designated sections one-e, six-b and six-c; to amend and reenact sections one, one-b, one-d, three and four, article five of said chapter; and to further amend said article five by adding thereto a new section, designated section one-e, all relating generally to workers' compensation; specifying the employers and employees who are made subject to said chapter; providing certain rules with respect to coverage of executive officers of certain employers; the payment and assessment of premiums to the commission and prescribing certain rules with respect to the assessment of delinquent premiums; prescribing certain penalties for interest and claims losses during periods of delinquency and default with respect to such premium payments; procedures for the payment of temporary total disability benefits; requiring certain notices be given employers and employees with respect thereto; requiring certain findings to be made by the commissioner with respect to such disability benefits and medical benefits with respect to such disability; providing for periods of filing timely objections to certain orders of the commissioner with respect to the compensability of total temporary disability benefits or any new modifications of such orders; prohibiting the payment of temporary total disability benefits for periods when claimant is incarcerated in penitentiary or jail; increasing the amount of benefits paid for funeral expenses; the classification of certain disability benefits and the manner of computing the amount of permanent disability awards, either permanent or partial; prescribing the percentage of disability with respect to the total loss of hearing of one or both ears; providing certain statutory rules with respect to occupational hearing loss claims; the manner of computing the percentage of permanent disability for both monaural and binaural hearing loss and the effect of speech discrimination, if any, with respect to permanent

partial disability awards in connection with binaural impairment; prescribing certain rules with respect to the application for benefits for hearing loss and procedures to be followed with respect thereto; providing an operative date for the provisions of said section six-b, article four, relating to hearing loss claims and the filing of application for benefits therefor; prescribing certain limitations upon benefits payable to certain employees of sheltered workshops; providing for the monitoring of certain temporary total disability benefits and the modification or termination of such benefits; prescribing certain rules with respect to such termination or modification; the effect of the recommendations of certain authorized treating physicians and of independent medical evaluations upon such temporary total disability benefit awards; providing for certain restrictions of the commission, the commissioner, the workers compensation appeal board and the supreme court of appeals for failure to file timely certain objections, notices and appeals; the effect of certain preexisting impairments upon subsequent compensable occupational injuries or diseases and upon claims made therefor; providing certain exceptions with respect to limiting the reopening of a claim or for objections and appeals and permitting extensions thereof in certain cases; the procedures of the workers' compensation appeal board and its jurisdiction; and procedures for appeals to the West Virginia supreme court of appeals and the time thereof and the payment of certain costs attendant thereto.

Be it enacted by the Legislature of West Virginia:

That sections one, one-a, one-b and five, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one-c, one-d, four, six, seven-a, eight-c, nine-b, fifteen and fifteen-b, article four of said chapter be amended and reenacted; that said article four be further amended by adding thereto three new sections, designated sections one-e, six-b and six-c; that sections one, one-b, one-d, three and four, article five of said chapter be amended and reenacted; and that said article five be further amended by adding thereto

a new section, designated section one-e, all to read as follows:

Article

2. **Employers and Employees Subject to Chapter; Extraterritorial Coverage.**
4. **Disability and Death Benefits.**
5. **Review.**

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1. Employers subject to chapter.

§23-2-1a. Employees subject to chapter.

§23-2-1b. Special provisions as to premiums.

§23-2-5. Application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees.

§23-2-1. Employers subject to chapter.

1 The state of West Virginia and all governmental
 2 agencies or departments created by it, including county
 3 boards of education, political subdivisions of the state,
 4 any volunteer fire department or company and other
 5 emergency service organizations as defined by article
 6 five, chapter fifteen of this code, and all persons, firms,
 7 associations and corporations regularly employing
 8 another person or persons for the purpose of carrying
 9 on any form of industry, service or business in this state,
 10 are employers within the meaning of this chapter and
 11 are hereby required to subscribe to and pay premiums
 12 into the workers' compensation fund for the protection
 13 of their employees and shall be subject to all require-
 14 ments of this chapter and all rules and regulations
 15 prescribed by the commissioner with reference to rate,
 16 classification and premium payment: *Provided*, That
 17 such rates will be adjusted by the commissioner to
 18 reflect the demand on the compensation fund by the
 19 covered employer.

20 The following employers are not required to subscribe
 21 to the fund, but may elect to do so:

- 22 (1) Employers of employees in domestic services; or
- 23 (2) Employers of five or fewer full-time employees in
 24 agricultural service; or
- 25 (3) Employers of employees while said employees are

26 employed without the state except in cases of temporary
27 employment without the state; or

28 (4) Casual employers. An employer is deemed to be a
29 casual employer when the number of his employees does
30 not exceed three and the period of employment is
31 temporary, intermittent and sporadic in nature and does
32 not exceed ten calendar days in any calendar quarter;

33 (5) Churches;

34 (6) Employers engaged in organized professional
35 sports activities, including employers of trainers and
36 jockeys engaged in thoroughbred horse racing; or

37 (7) Employers of employees who are officers of and
38 stockholders in a corporation qualifying for special tax
39 treatment under subchapter S of the Internal Revenue
40 Code of the United States.

41 If an employer is a partnership, sole proprietorship,
42 association or corporation, such employer may elect to
43 include as an "employee" within this chapter, any
44 member of such partnership, the owner of the sole
45 proprietorship, or any corporate or executive officer of
46 the association or corporation. In the event of such
47 election, the employer shall serve upon the commissioner
48 written notice naming the persons to be covered and
49 shall include such "employee's" remuneration for
50 premium purposes in all future payroll reports, and no
51 such partner, proprietor or corporate or executive
52 officer shall be deemed an employee within the meaning
53 of this chapter until such notice has been served.

54 Notwithstanding any other provision of this chapter
55 to the contrary, whenever there are churches in a circuit
56 which employ one individual clergyman and the pay-
57 ments to such clergyman from such churches constitute
58 his full salary, such circuit or group of churches may
59 elect to be considered a single employer for the purpose
60 of premium payment into the workers' compensation
61 fund.

62 Employers who are not required to subscribe to the
63 workers' compensation fund may voluntarily choose to
64 subscribe to and pay premiums into the fund for the

65 protection of their employees and in such case shall be
66 subject to all requirements of this chapter and all rules
67 and regulations prescribed by the commissioner with
68 reference to rates, classifications and premium pay-
69 ments and shall afford to them the protection of this
70 chapter, including section six of this article, but the
71 failure of such employers to choose to subscribe to and
72 to pay premiums into the fund shall not impose any
73 liability upon them other than such liability as would
74 exist notwithstanding the provisions of this chapter.

75 Any foreign corporation employer whose employment
76 in this state is to be for a definite or limited period
77 which could not be considered "regularly employing"
78 within the meaning of this section may choose to pay
79 into the workers' compensation fund the premiums
80 herein provided for, and at the time of making
81 application to the commissioner, such employer shall
82 furnish a statement under oath showing the probable
83 length of time the employment will continue in this
84 state, the character of the work, an estimate of the
85 monthly payroll and any other information which may
86 be required by the commissioner. At the time of making
87 application such employer shall deposit with the state
88 compensation commissioner to the credit of the workers'
89 compensation fund the amount required by section five
90 of this article, which amount shall be returned to the
91 employer if his application be rejected by the commis-
92 sioner. Upon notice to such employer of the acceptance
93 of his application by the commissioner, he shall be an
94 employer within the meaning of this chapter and subject
95 to all of its provisions.

96 Any foreign corporation employer choosing to comply
97 with the provisions of this chapter and to receive the
98 benefits hereunder shall, at the time of making appli-
99 cation to the commissioner, in addition to other require-
100 ments of this chapter, furnish such commissioner with
101 a certificate from the secretary of state, where such
102 certificate is necessary, showing that it has complied
103 with all the requirements necessary to enable it legally
104 to do business in this state and no application of such
105 foreign corporation employer shall be accepted by the

106 commissioner until such certificate is filed.

§23-2-1a. Employees subject to chapter.

1 Employees subject to this chapter are all persons in
2 the service of employers and employed by them for the
3 purpose of carrying on the industry, business, service or
4 work in which they are engaged, including, but not
5 limited to, persons regularly employed in the state
6 whose duties necessitate employment of a temporary or
7 transitory nature by the same employer without the
8 state, every person in the service of the state or of any
9 political subdivision or agency thereof, under any
10 contract of hire, express or implied, and every official
11 or officer thereof, whether elected or appointed, while
12 performing his official duties, checkweighmen employed
13 according to law, all members of rescue teams assisting
14 in mine accidents with the consent of the owner who,
15 in such case, shall be deemed the employer, or at the
16 direction of the director of the department of mines and
17 all forest fire fighters who, under the supervision of the
18 director of the department of natural resources or his
19 designated representative, assist in the prevention,
20 confinement and suppression of any forest fire.

21 The right to receive compensation under this chapter
22 shall not be affected by the fact that a minor is employed
23 or is permitted to be employed in violation of the laws
24 of this state relating to the employment of minors, or
25 that he obtained his employment by misrepresenting his
26 age.

§23-2-1b. Special provisions as to premiums.

1 Every executive officer of an association or of a
2 corporation, any member of a partnership or owner of
3 a sole proprietorship which has elected coverage under
4 this chapter for such member or owner shall pay
5 premiums based upon the actual salary paid to such
6 employee up to an amount sufficient to qualify such
7 employee to receive the maximum level of benefits, but
8 in no event shall the basis for premium be less than the
9 salary necessary to provide such employee with the
10 minimum level of benefits.

11 The premium and actual expenses in connection with
12 governmental agencies and departments of the state of
13 West Virginia shall be paid out of the state treasury
14 from appropriations made for such agencies and
15 departments, in the same manner as other disburse-
16 ments are made by such agencies and departments.

17 County commissions, municipalities, other political
18 subdivisions of the state, county boards of education,
19 emergency service organizations organized as aforesaid
20 and volunteer fire departments or companies shall
21 provide for the funds to pay their prescribed premiums
22 into the fund and such premiums and premiums of state
23 agencies and departments, including county boards of
24 education, shall be paid into the fund in the same
25 manner as herein provided for other employers subject
26 to this chapter.

27 County commissions and municipalities are hereby
28 authorized to pay all or any part of the premiums
29 prescribed for such emergency service organizations
30 organized as aforesaid and such duly incorporated
31 volunteer fire departments or companies as may provide
32 services within the county or municipality.

**§23-2-5. Application; payment of premiums; payroll
report; premiums; deposits; delinquency;
default; reinstatement; payment of benefits;
notice to employees.**

1 (a) For the purpose of creating a workers' compensa-
2 tion fund each employer who is required to subscribe to
3 the fund or who elects to subscribe to the fund, shall pay
4 premiums calculated as a percentage of the employer's
5 payroll at the rate determined by the commissioner and
6 then in effect. At the time each employer subscribes to
7 the fund, the application required by the commissioner
8 shall be filed and a premium deposit equal to the first
9 quarter's estimated premium payment shall be remit-
10 ted. The minimum quarterly premium to be paid by any
11 employer shall be ten dollars.

12 Thereafter, premiums shall be paid quarterly on or
13 before the last day of the month following the end of the
14 quarter, and shall be the prescribed percentage of the

15 total earnings of all employees during the preceding
16 quarter.

17 At the time each premium is paid, every subscribing
18 employer shall make a payroll report to the commis-
19 sioner for the preceding quarter. The report shall be on
20 the form or forms prescribed by the commissioner, and
21 shall contain all information required by the
22 commissioner.

23 After subscribing to the fund, each employer shall
24 remit with each payroll report and premium payment,
25 an amount calculated to be sufficient to maintain a
26 premium deposit equal to the previous quarter's
27 premium payment: *Provided*, That the commissioner
28 may reduce the amount of the premium deposit required
29 from seasonal employers for those quarters during
30 which employment is significantly reduced. The pre-
31 mium deposit shall be credited to the employer's account
32 on the books of the commissioner and used to pay
33 premiums and any other sums due the fund when an
34 employer becomes delinquent.

35 All premiums and premium deposits required to be
36 paid by this chapter shall be paid by the employers to
37 the workers' compensation commissioner, who shall
38 maintain record of all sums so received. All sums
39 received by the commissioner shall be deposited in the
40 state treasury to the credit of the workers' compensation
41 fund in the manner now prescribed by law.

42 (b) Failure of an employer to timely pay premium, to
43 timely file a payroll report, or to maintain an adequate
44 premium deposit, shall cause the employer's account to
45 become delinquent. No employer will be declared
46 delinquent or be assessed any penalty therefor if the
47 commissioner determines that such delinquency has
48 been caused by delays in the administration of the fund.
49 The commissioner shall, in writing, within sixty days of
50 the end of each quarter notify all delinquent employers
51 of their failure to timely pay premiums, to timely file
52 a payroll report, or to maintain an adequate premium
53 deposit. The notification shall demand the filing of the
54 delinquent payroll report and payment of delinquent

55 premiums, and/or payment of an amount sufficient to
56 maintain the premium deposit, before the end of the
57 third month following the end of the preceding quarter.
58 The notification shall also require payment of interest
59 on the delinquent premium payment and/or premium
60 deposit pursuant to section thirteen of this article.

61 (c) Whenever the commissioner notifies an employer
62 of the delinquent status of his account, the notification
63 shall explain the legal consequence of subsequent
64 default by employers required to subscribe to the fund,
65 and the effects of termination of any electing employer's
66 account.

67 (d) Failure by the employer, who is required to
68 subscribe to the fund and who fails to resolve his
69 delinquency within the prescribed period, shall place
70 the account in default and shall deprive such defaulting
71 employer of the benefits and protection afforded by this
72 chapter including section six of this article, and he shall
73 be liable as provided in section eight of this article. The
74 defaulting employer's liability under section eight of this
75 article shall be retroactive to twelve o'clock p.m., of the
76 last day of the month following the end of the quarter
77 for which the delinquency occurs. The commissioner
78 shall notify the defaulting employer of the method by
79 which the employer may be reinstated with the fund.
80 The commissioner shall also notify the employees of such
81 employer by written notice as hereinafter provided for
82 in this section.

83 (e) Failure by any employer, who voluntarily elects to
84 subscribe, to resolve his delinquency within the pres-
85 cribed period, shall automatically terminate the election
86 of such employer to pay into the workers' compensation
87 fund and shall deprive such delinquent employer of the
88 benefits and protection afforded by this chapter includ-
89 ing section six of this article, and he shall be liable as
90 provided in section eight of this article. The defaulting
91 employer's liability under section eight of this article
92 shall be retroactive to twelve o'clock p.m., of the last day
93 of the month following the end of the quarter for which
94 the delinquency occurs.

95 (f) Any employer, who is required to subscribe to the
96 fund and subsequently defaults, or who elects to
97 subscribe and subsequently his account is terminated,
98 shall be restored immediately to the benefits and
99 protection of this chapter only upon the filing of all
100 delinquent payroll and other reports required by the
101 commissioner and payment into the fund of all unpaid
102 premiums, an adequate premium deposit, accrued
103 interest and claims losses paid during the period of
104 delinquency and default: *Provided*, That the penalty for
105 interest and claims losses paid by the fund during the
106 period of delinquency and default shall not exceed an
107 amount equal to fifty percent of the premium otherwise
108 due and owing for the period of delinquency and default:
109 *Provided, however*, That the period for which such
110 penalty is assessed may be limited to a period of five
111 (5) years immediately preceding the date of the commis-
112 sioner's receipt of the employer's application for
113 reinstatement. The commissioner shall, upon written
114 application for reinstatement filed by an employer,
115 order that an administrative hearing be held prior to
116 reinstatement to determine the terms of repayment of
117 all delinquent premiums, premium deposits and accrued
118 interest, and the extent to which interest and claims
119 losses may be waived, equitably considering, (1) the
120 exact nature of the default, (2) the amount of the claims
121 losses, (3) the solvency of the fund, (4) the financial
122 condition of the employer, (5) the degree of willfulness
123 exhibited by the employer's conduct resulting in the
124 default, and (6) the potential economic impact upon the
125 state and the specific geographic area in which the
126 employer is located, if the employer should cease
127 operations. Any such administrative hearing shall be
128 conducted pursuant to article five, chapter twenty-nine-
129 a of this code.

130 Applications for reinstatement shall: (1) Be made
131 upon forms prescribed by the commissioner; (2) include
132 a report of the gross payroll of the employer during the
133 entire period of default, which payroll information shall
134 be verified by the employer or its authorized agent; and
135 (3) include a payment equal to one half of one percent
136 of the gross payroll reported during the period of

137 default, or one hundred dollars, whichever amount shall
138 be greater. An employer who applies for reinstatement
139 shall be entitled to the benefits and protection of this
140 chapter on the day the application is received by the
141 commissioner: *Provided*, That if the commissioner
142 reinstates an employer subject to the terms of a
143 repayment agreement, the subsequent failure of the
144 employer to make scheduled payments in accordance
145 with the repayment agreement, to timely file current
146 premiums or to restore the premium deposit to the
147 required amount by the end of the repayment period
148 shall cause the repayment agreement to be null, void
149 and of no effect, and the employer shall be denied the
150 benefits and protection of this chapter effective from the
151 date that such employer's account originally became
152 delinquent.

153 (g) No employee of an employer required by this
154 chapter to subscribe to the workers' compensation fund
155 shall be denied benefits provided by this chapter
156 because the employer failed to subscribe or because the
157 employer's account is either delinquent or in default.

158 (h) The provisions of this section shall not deprive any
159 individual of any cause of action which has accrued as
160 a result of an injury or death which occurred during any
161 period of delinquency not resolved in accordance with
162 the provisions of this article, or subsequent failure to
163 comply with the terms of the repayment agreement.

164 Upon withdrawal from the fund or termination of
165 election of any employer, he shall be refunded the
166 balance due him of his deposit, after deducting all
167 amounts owed by him to the workers' compensation
168 fund, and the commissioner shall notify the employees
169 of such employer of said termination in such manner as
170 he may deem best and sufficient.

171 Notice to employees in this section provided for shall
172 be given by posting written notice that the employer is
173 delinquent under the compensation law of West Virgi-
174 nia, and in the case of employers required by this
175 chapter to subscribe and pay premiums to the fund, that
176 the delinquent employer is liable to his employees for

177 injury or death, both in workers' compensation benefits
178 and in damages at common law or by statute; and, in
179 the case of employers not required by this chapter to
180 subscribe and pay premiums to the fund, but voluntarily
181 electing to do so as herein provided, that neither the
182 employer nor the employees of such employer are
183 protected by said laws as to any injury or death
184 sustained after the date specified in said notice. Such
185 notice shall be in the form prescribed by the commis-
186 sioner and shall be posted in a conspicuous place at the
187 chief works of the employer, as the same appear in
188 records of the commissioner. If the said chief works of
189 the employer cannot be found or identified, then said
190 notices shall be posted at the front door of the courthouse
191 of the county in which said chief works are located,
192 according to the records in the commissioner's office.
193 Any person who shall, prior to the reinstatement of the
194 said employer, as hereinbefore provided for, or prior to
195 sixty days after the posting of said notice, whichever
196 shall first occur, remove, deface, or render illegible the
197 said notice, shall be guilty of a misdemeanor, and, upon
198 conviction thereof, shall be fined not to exceed five
199 hundred dollars, and the said notice shall state this
200 provision upon its face. The commissioner may require
201 any sheriff, deputy sheriff, constable or other official of
202 the State of West Virginia, who may be authorized to
203 serve civil process, to post such notice and to make
204 return thereof of the fact of such posting to the
205 commissioner, and any failure of such officer to post any
206 notice within ten days after he shall have received the
207 same from the commissioner, without just cause or
208 excuse, shall constitute a willful failure or refusal to
209 perform a duty required of him by law within the
210 meaning of section twenty-eight, article five, chapter
211 sixty-one of this code. Any person actually injured by
212 reason of such failure shall have an action against said
213 official, and upon any official bond he may have given,
214 for such damages as such person may actually have
215 incurred, but not to exceed, in the case of any surety
216 upon said bond, the amount of the penalty of said bond.
217 Any official posting said notice as herein required shall
218 be entitled to the same fee as is now or may hereafter

219 be provided for the service of process in suits instituted
 220 in courts of record in the state of West Virginia, which
 221 fee shall be paid by the commissioner out of any funds
 222 at his disposal, but shall be charged by him against the
 223 account of the employer to whose delinquency such
 224 notice relates.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

§23-4-1d. Method and time of payments for permanent disability.

§23-4-1e. Temporary total disability benefits not to be paid for periods of penitentiary or jail confinement.

§23-4-4. Funeral expenses.

§23-4-6. Classification of disability benefits.

§23-4-6b. Occupational hearing loss claims.

§23-4-6c. Benefits payable to certain sheltered workshop employees; limitations.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physicians; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority.

§23-4-8c. Occupational pneumoconiosis board reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

§23-4-9b. Preexisting impairments not considered in fixing amount of compensation.

§23-4-15. Application for benefits.

§23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

1 (a) In any claim for benefits under this chapter, the
 2 commissioner shall determine whether the claimant has
 3 sustained a compensable injury within the meaning of
 4 section one of this article, and he shall enter an order
 5 giving all parties immediate notice of such decision. Any
 6 party shall have the right to protest the order of the
 7 commissioner and obtain an evidentiary hearing as
 8 provided in section one, article five of this chapter.

9 (b) Where it appears from the employer's report, or
10 from proper medical evidence, that a compensable
11 injury will result in a disability which will last longer
12 than three days as provided in section five of this article,
13 the commissioner may immediately enter an order
14 commencing the payment of temporary total disability
15 benefits to the claimant in the amounts provided for in
16 sections six and fourteen of this article, and payment of
17 the expenses provided for in subdivision (a), section
18 three of this article, relating to said injury, without
19 waiting for the expiration of the thirty-day period
20 during which objections may be filed to such findings
21 as provided in section one, article five of this chapter.
22 The commissioner shall enter an order commencing the
23 payment of temporary total disability or medical
24 benefits within fifteen days of receipt of either the
25 employee's or employer's report of injury, whichever is
26 received sooner, and also upon receipt of either a proper
27 physician's report or any other information necessary
28 for a determination. The commissioner shall give to the
29 parties immediate notice of any order granting tempor-
30 ary total disability or medical benefits.

31 (c) The commissioner may enter orders granting
32 temporary total disability benefits upon receipt of
33 medical evidence justifying the payment of such
34 benefits. In no claim shall the commissioner enter an
35 order granting prospective temporary total disability
36 benefits for a period of more than ninety days: *Provided,*
37 That when the commissioner determines that the
38 claimant remains disabled beyond the period specified
39 in the prior order granting temporary total disability
40 benefits, the commissioner shall enter an order contin-
41 uing the payment of temporary total disability benefits
42 for an additional period not to exceed ninety days, and
43 shall give immediate notice to all parties of such
44 decision.

45 (d) Upon receipt of the first report of injury in a claim,
46 the commissioner shall request from the employer or
47 employers any wage information necessary for deter-
48 mining the rate of benefits to which the employee is
49 entitled. If an employer does not furnish the commis-

50 sioner with this information within fifteen days from the
51 date the commissioner received the first report of injury
52 in the case, the employee shall be paid temporary total
53 disability benefits for lost time at the rate the commis-
54 sioner believes would be justified by the usual rate of
55 pay for the occupation of the injured employee. The
56 commissioner shall adjust the rate of benefits both
57 retroactively and prospectively upon receipt of proper
58 wage information. The commissioner shall have access
59 to all wage information in the possession of any state
60 agency, including wage information received by the
61 department of employment security under chapter
62 twenty-one-a of this code, pertinent to such determina-
63 tion.

64 (e) Upon a finding of the commissioner that a claimant
65 who has sustained a previous compensable injury which
66 has been closed by any order of the commissioner, or by
67 the claimant's return to work, suffers further temporary
68 total disability or requires further medical or hospital
69 treatment resulting from the compensable injury, the
70 commissioner shall immediately enter an order com-
71 mencing the payment of temporary total disability
72 benefits to the claimant in the amount provided for in
73 sections six and fourteen of this article, and the expenses
74 provided for in subdivision (a), section three of this
75 article, relating to said disability, without waiting for
76 the expiration of the thirty-day period during which
77 objections may be filed to such findings as provided in
78 section one, article five of this chapter. The commis-
79 sioner shall give immediate notice to the parties of his
80 order.

81 (f) Where the employer is a subscriber to the workers'
82 compensation fund under the provisions of article three
83 of this chapter, and upon the findings aforesaid, the
84 commissioner shall mail all workers' compensation
85 checks paying temporary total disability benefits
86 directly to the claimant and not to the employer for
87 delivery to the claimant.

88 (g) Where the employer has elected to carry his own
89 risk under section nine, article two of this chapter, and
90 upon the findings aforesaid, the commissioner shall

91 immediately issue a pay order directing the employer
92 to pay such amounts as are due the claimant for
93 temporary total disability benefits. A copy of the order
94 shall be sent to the claimant. The self-insured employer
95 shall commence such payments by mailing or delivering
96 the payments directly to the employee within ten days
97 of the date of the receipt of the pay order by the
98 employer. If the self-insured employer believes that his
99 employee is entitled to benefits, he may start payments
100 before receiving a pay order from the commissioner.

101 (h) In the event an employer files a timely objection
102 to any order of the commissioner with respect to
103 compensability, or any order denying an application for
104 modification with respect to temporary total disability
105 benefits, or with respect to those expenses outlined in
106 subdivision (a), section three of this article, the commis-
107 sioner shall continue to pay to the claimant such benefits
108 and expenses during the period of such disability.
109 Where it is subsequently found by the commissioner that
110 the claimant was not entitled to receive such temporary
111 total disability benefits or expenses, or any part thereof,
112 so paid, the commissioner shall, when the employer is
113 a subscriber to the fund, credit said employer's account
114 with the amount of the overpayment; and, when the
115 employer has elected to carry its own risk, the commis-
116 sioner shall refund to such employer the amount of the
117 overpayment. The amounts so credited to a subscriber
118 or repaid to a self-insurer shall be charged by the
119 commissioner to the surplus fund created in section one,
120 article three of this chapter.

121 (i) When the employer has protested the compensabil-
122 ity or applied for modification of a temporary total
123 disability benefit award or expenses and the final
124 decision in such case determines that the claimant was
125 not entitled to such benefits or expenses, the amount of
126 such benefits or expenses shall be deemed overpaid. The
127 commissioner may only recover the amount of such
128 benefits or expenses by withholding, in whole or in part,
129 as determined by the commissioner, future permanent
130 partial disability benefits payable to the individual in
131 the same or other claims and credit such amount against

132 the overpayment until it is repaid in full.

133 (j) In the event that the commissioner finds that based
134 upon the employer's report of injury, the claim is not
135 compensable, the commissioner shall provide a copy of
136 such employer's report in addition to the order denying
137 the claim.

§23-4-1d. Method and time of payments for permanent disability.

1 (a) If the commissioner makes an award for perman-
2 ent partial or permanent total disability, the commis-
3 sioner or self-insured employer shall start payment of
4 benefits by mailing or delivering the amount due
5 directly to the employee within fifteen days from the
6 date of the award.

7 (b) If a timely protest to the award is filed, as provided
8 in section one, article five of this chapter, the commis-
9 sioner or self-insured employer shall continue to pay to
10 the claimant such benefits during the period of such
11 disability unless it is subsequently found by the
12 commissioner that the claimant was not entitled to
13 receive the benefits, or any part thereof, so paid, in
14 which event the commissioner shall, where the employer
15 is a subscriber to the fund, credit said employer's
16 account with the amount of the overpayment; and,
17 where the employer has elected to carry his own risk,
18 the commissioner shall refund to such employer the
19 amount of the overpayment. The amounts so credited to
20 a subscriber or repaid to a self-insurer shall be charged
21 by the commissioner to the surplus fund created by
22 section one, article three of this chapter. If the final
23 decision in any case determines that a claimant was not
24 lawfully entitled to benefits paid to him pursuant to a
25 prior decision, such amount of benefits so paid shall be
26 deemed overpaid. The commissioner may only recover
27 such amount by withholding, in whole or in part, as
28 determined by the commissioner, future permanent
29 partial disability benefits payable to the individual in
30 the same or other claims and credit such amount against
31 the overpayment until it is repaid in full.

§23-4-1e. Temporary total disability benefits not to be paid for periods of penitentiary or jail confinement.

1 Notwithstanding any provision of this code to the
2 contrary, no person shall be jurisdictionally entitled to
3 temporary total disability benefits for that period of
4 time in excess of three days during which such person
5 is incarcerated in a penitentiary or jail: *Provided*, That
6 incarceration shall not affect the claimant's eligibility
7 for payment of expenses. Upon release from confine-
8 ment, the payment of benefits for the remaining period
9 of temporary total disability shall be made if justified
10 by the evidence and authorized by order of the commis-
11 sioner.

§23-4-4. Funeral expenses.

1 In case the personal injury causes death, reasonable
2 funeral expenses, not to exceed three thousand five
3 hundred dollars, shall be paid from the fund, payment
4 to be made to the persons who have furnished the
5 services and supplies, or to the persons who have
6 advanced payment for same, as the commissioner may
7 deem proper, in addition to such award as may be made
8 to the employee's dependents.

§23-4-6. Classification of disability benefits.

1 Where compensation is due an employee under the
2 provisions of this chapter for personal injury, such
3 compensation shall be as provided in the following
4 schedule:

5 (a) The expressions "average weekly wage earnings,
6 wherever earned, of the injured employee, at the date
7 of injury" and "average weekly wage in West Virginia,"
8 as used in this chapter, shall have the meaning and shall
9 be computed as set forth in section fourteen of this
10 article.

11 (b) If the injury causes temporary total disability, the
12 employee shall receive during the continuance thereof
13 weekly benefits as follows: A maximum weekly benefit
14 to be computed on the basis of seventy percent of the
15 average weekly earnings, wherever earned, of the
16 injured employee, at the date of injury, not to exceed the

17 percentage of the average weekly wage in West
18 Virginia, as follows: On or after July one, one thousand
19 nine hundred sixty-nine, forty-five percent; on or after
20 July one, one thousand nine hundred seventy, fifty
21 percent; on or after July one, one thousand nine hundred
22 seventy-one, fifty-five percent; on or after July one, one
23 thousand nine hundred seventy-three, sixty percent; on
24 or after July one, one thousand nine hundred seventy-
25 four, eighty percent; on or after July one, one thousand
26 nine hundred seventy-five, one hundred percent.

27 The minimum weekly benefits paid hereunder shall
28 not be less than twenty-six dollars per week for injuries
29 occurring on or after July one, one thousand nine
30 hundred sixty-nine; not less than thirty-five dollars per
31 week for injuries occurring on or after July one, one
32 thousand nine hundred seventy-one; not less than forty
33 dollars per week for injuries occurring on or after July
34 one, one thousand nine hundred seventy-three; not less
35 than forty-five dollars per week for injuries occurring
36 on or after July one, one thousand nine hundred seventy-
37 four; and for injuries occurring on or after July one, one
38 thousand nine hundred seventy-six, thirty-three and one-
39 third percent of the average weekly wage in West
40 Virginia.

41 (c) Subdivision (b) shall be limited as follows: Aggre-
42 gate award for a single injury causing temporary
43 disability shall be for a period not exceeding two
44 hundred eight weeks.

45 (d) If the injury causes permanent total disability,
46 benefits shall be payable during the remainder of life
47 at the maximum or minimum weekly benefits as
48 provided in subdivision (b) of this section for temporary
49 total disability. A permanent disability of eighty-five
50 percent or more shall be deemed a permanent total
51 disability for the purpose of this section. Under no
52 circumstances shall the commissioner grant an
53 additional permanent disability award to a claimant
54 receiving a permanent total disability award, or to a
55 claimant who has previously been granted permanent
56 disability awards totaling eighty-five percent or more
57 and hence is entitled to a permanent total disability

58 award: *Provided*, That if any such claimant thereafter
59 sustains another compensable injury and has permanent
60 partial disability resulting therefrom, the total perman-
61 ent disability award benefit rate shall be computed at
62 the highest benefit rate justified by any of the compen-
63 sable injuries, and the cost of any increase in such
64 permanent total disability benefit rate shall be paid
65 from the second injury reserve created by section one,
66 article three of this chapter.

67 (e) If the injury causes permanent disability less than
68 permanent total disability, the percentage of disability
69 to total disability shall be determined and the award
70 computed on the basis of four weeks' compensation for
71 each percent of disability determined, at the following
72 maximum or minimum benefit rates: Seventy percent
73 of the average weekly earnings, wherever earned, of the
74 injured employee, at the date of injury, not to exceed the
75 percentage of the average weekly wage in West
76 Virginia, as follows: On or after July one, one thousand
77 nine hundred sixty-nine, forty-five percent; on or after
78 July one, one thousand nine hundred seventy, fifty
79 percent; on or after July one, one thousand nine hundred
80 seventy-one, fifty-five percent; on or after July one, one
81 thousand nine hundred seventy-three, sixty percent; on
82 or after July one, one thousand nine hundred seventy-
83 five, sixty-six and two-thirds percent.

84 The minimum weekly benefit under this subdivision
85 shall be as provided in subdivision (b) of this section for
86 temporary total disability.

87 (f) If the injury results in the total loss by severance
88 of any of the members named in this subdivision, the
89 percentage of disability shall be determined by the
90 commissioner, with the following table establishing the
91 minimum percentage of disability. In determining the
92 percentage of disability, the commissioner may be
93 guided by, but shall not be limited to, the disabilities
94 enumerated in the following table, and in no event shall
95 the disability be less than that specified in the following
96 table:

97 The loss of a great toe shall be considered a ten

98 percent disability.

99 The loss of a great toe (one phalanx) shall be consi-
100 dered a five percent disability.

101 The loss of other toes shall be considered a four
102 percent disability.

103 The loss of other toes (one phalanx) shall be considered
104 a two percent disability.

105 The loss of all toes shall be considered a twenty-five
106 percent disability.

107 The loss of forepart of foot shall be considered a thirty
108 percent disability.

109 The loss of foot shall be considered a thirty-five
110 percent disability.

111 The loss of a leg shall be considered a forty-five
112 percent disability.

113 The loss of thigh shall be considered a fifty percent
114 disability.

115 The loss of thigh at hip joint shall be considered a
116 sixty percent disability.

117 The loss of a little or fourth finger (one phalanx) shall
118 be considered a three percent disability.

119 The loss of a little or fourth finger shall be considered
120 a five percent disability.

121 The loss of ring or third finger (one phalanx) shall be
122 considered a three percent disability.

123 The loss of ring or third finger shall be considered a
124 five percent disability.

125 The loss of middle or second finger (one phalanx) shall
126 be considered a three percent disability.

127 The loss of middle or second finger shall be considered
128 a seven percent disability.

129 The loss of index or first finger (one phalanx) shall
130 be considered a six percent disability.

131 The loss of index or first finger shall be considered

- 132 a ten percent disability.
- 133 The loss of thumb (one phalanx) shall be considered
134 a twelve percent disability.
- 135 The loss of thumb shall be considered a twenty
136 percent disability.
- 137 The loss of thumb and index finger shall be considered
138 a thirty-two percent disability.
- 139 The loss of index and middle finger shall be consi-
140 dered a twenty percent disability.
- 141 The loss of middle and ring finger shall be considered
142 a fifteen percent disability.
- 143 The loss of ring and little finger shall be considered
144 a ten percent disability.
- 145 The loss of thumb, index and middle finger shall be
146 considered a forty percent disability.
- 147 The loss of index, middle and ring finger shall be
148 considered a thirty percent disability.
- 149 The loss of middle, ring and little finger shall be
150 considered a twenty percent disability.
- 151 The loss of four fingers shall be considered a thirty-
152 two percent disability.
- 153 The loss of hand shall be considered a fifty percent
154 disability.
- 155 The loss of forearm shall be considered a fifty-five
156 percent disability.
- 157 The loss of arm shall be considered a sixty percent
158 disability.
- 159 The total and irrecoverable loss of the sight of one eye
160 shall be considered a thirty-three percent disability. For
161 the partial loss of vision in one, or both eyes, the
162 percentages of disability shall be determined by the
163 commissioner, using as a basis the total loss of one eye.
- 164 The total and irrecoverable loss of the hearing of one
165 ear shall be considered a twenty-two and one-half
166 percent disability. The total and irrecoverable loss of

167 hearing of both ears shall be considered a fifty-five
168 percent disability.

169 For the partial loss of hearing in one, or both ears,
170 the percentage of disability shall be determined by the
171 commissioner, using as a basis the total loss of hearing
172 in both ears.

173 Should a claimant sustain a compensable injury which
174 results in the total loss by severance of any of the bodily
175 members named in this subdivision, die from sickness
176 or noncompensable injury before the commissioner
177 makes the proper award for such injury, the commis-
178 sioner shall make such award to claimant's dependents
179 as defined in this chapter, if any; such payment to be
180 made in the same installments that would have been
181 paid to claimant if living: *Provided*, That no payment
182 shall be made to any widow of such claimant after her
183 remarriage, and that this liability shall not accrue to the
184 estate of such claimant and shall not be subject to any
185 debts of, or charges against, such estate.

186 (g) Should a claimant to whom has been made a
187 permanent partial award of from one percent to eighty-
188 four percent, both inclusive, die from sickness or
189 noncompensable injury, the unpaid balance of such
190 award shall be paid to claimant's dependents as defined
191 in this chapter, if any; such payment to be made in the
192 same installments that would have been paid to
193 claimant if living: *Provided*, That no payment shall be
194 made to any widow of such claimant after her remar-
195 riage, and that this liability shall not accrue to the estate
196 of such claimant and shall not be subject to any debts
197 of, or charges against, such estate.

198 (h) For the purposes of this chapter, a finding of the
199 occupational pneumoconiosis board shall have the force
200 and effect of an award.

201 (i) The award for permanent disabilities intermediate
202 to those fixed by the foregoing schedule and permanent
203 disability of from one percent to eighty-four percent
204 shall be the same proportion and shall be computed and
205 allowed by the commissioner.

206 (j) The percentage of all permanent disabilities other
207 than those enumerated in subdivision (f) of this section
208 shall be determined by the commissioner, and awards
209 made in accordance with the provisions of subdivision
210 (d) or (e) of this section. Where there has been an injury
211 to a member as distinguished from total loss by
212 severance of that member, the commissioner in
213 determining the percentage of disability may be guided
214 by, but shall not be limited to, the disabilities enumer-
215 ated in subdivision (f) of this section.

216 (k) Compensation payable under any subdivision of
217 this section shall not exceed the maximum nor be less
218 than the weekly benefits specified in subdivision (b) of
219 this section.

220 (1) Except as otherwise specifically provided in this
221 chapter, temporary total disability benefits payable
222 under subdivision (b) of this section shall not be
223 deductible from permanent partial disability awards
224 payable under subdivision (e) or (f) of this section.
225 Compensation, either temporary total or permanent
226 partial, under this section shall be payable only to the
227 injured employee and the right thereto shall not vest in
228 his or her estate, except that any unpaid compensation
229 which would have been paid or payable to the employee
230 up to the time of his death, if he had lived, shall be paid
231 to the dependants of such injured employee if there be
232 such dependents at the time of death.

233 (m) The following permanent disabilities shall be
234 conclusively presumed to be total in character:

235 Loss of both eyes or the sight thereof.

236 Loss of both hands or the use thereof.

237 Loss of both feet or the use thereof.

238 Loss of one hand and one foot or the use thereof.

239 In all other cases permanent disability shall be
240 determined by the commissioner in accordance with the
241 facts in the case, and award made in accordance with
242 the provisions of subdivision (d) or (e).

243 (n) A disability which renders the injured employee

244 unable to engage in substantial gainful activity requir-
245 ing skills or abilities comparable to those of any gainful
246 activity in which he has previously engaged with some
247 regularity and over a substantial period of time shall be
248 considered in determining the issue of total disability.

§23-4-6b. Occupational hearing loss claims.

1 (a) In all claims for occupational hearing loss caused
2 by either a single incident of trauma or by exposure to
3 hazardous noise in the course of and resulting from
4 employment, the degree of permanent partial disability,
5 if any, shall be determined in accordance with the
6 provisions of this section and awards made in accor-
7 dance with the provisions of section six of this article.

8 (b) The percent of permanent partial disability for a
9 monaural hearing loss shall be computed in the follow-
10 ing manner:

11 (1) The measured decibel loss of hearing due to injury
12 at the sound frequencies of five hundred, one thousand,
13 two thousand and three thousand hertz shall be deter-
14 mined for the injured ear and the total shall be divided
15 by four to ascertain the average decibel loss;

16 (2) The percent of monaural hearing impairment for
17 the injured ear shall be calculated by multiplying by one
18 and six-tenths percent the difference by which the
19 aforementioned average decibel loss exceeds twenty-
20 seven and one-half decibels, up to a maximum of one
21 hundred percent hearing impairment, which maximum
22 is reached at ninety decibels; and

23 (3) The percent of monaural hearing impairment so
24 obtained shall then be multiplied by twenty-two and
25 one-half to ascertain the degree of permanent partial
26 disability.

27 (c) The percent of permanent partial disability for a
28 binaural hearing loss shall be computed in the following
29 manner:

30 (1) The measured decibel loss of hearing due to injury
31 at the sound frequencies of five hundred, one thousand,
32 two thousand and three thousand hertz shall be deter-

33 mined for each ear and the total for each ear shall be
34 divided by four to ascertain the average decibel loss for
35 each ear;

36 (2) The percent of hearing impairment for each ear
37 shall be calculated by multiplying by one and six-tenths
38 percent the difference by which the aforementioned
39 average decibel loss exceeds twenty-seven and one-half
40 decibels, up to a maximum of one hundred percent
41 hearing impairment, which maximum is reached at
42 ninety decibels;

43 (3) The percent of binaural hearing impairment shall
44 then be calculated by multiplying the smaller percent-
45 age (better ear) by five, adding this figure to the larger
46 percentage (poorer ear), and dividing the sum by six;
47 and

48 (4) The percent of binaural hearing impairment so
49 obtained shall then be multiplied by fifty-five to
50 ascertain the degree of permanent partial disability.

51 (d) No permanent partial disability benefits shall be
52 granted for tinnitus, psychogenic hearing loss, recruit-
53 ment or hearing loss above three thousand hertz.

54 (e) An additional amount of permanent partial
55 disability shall be granted for impairment of speech
56 discrimination, if any. To determine the additional
57 amount for binaural impairment, the percentage of
58 speech discrimination in each ear shall be added
59 together and the result divided by two to calculate the
60 average percentage of speech discrimination, and the
61 permanent partial disability shall be ascertained by
62 reference to the percentage of permanent partial
63 disability in the table below on the line with the
64 percentage of speech discrimination so obtained. To
65 determine the additional amount for monaural impair-
66 ment, the permanent partial disability shall be ascer-
67 tained by reference to the percentage of permanent
68 partial disability in the table below on the line with the
69 percentage of speech discrimination in the injured ear.

TABLE

	% of Speech Discrimination	% Of Permanent Partial Disability
75	90%...and up to and including 100%	0%
76	80%...and up to but not including 90%	1%
77	70%...and up to but not including 80%	3%
78	60%...and up to but not including 70%	4%
79	0%...and up to but not including 60%	5%

80 (f) No temporary total disability benefits shall be
81 granted for noise induced hearing loss.

82 (g) An application for benefits alleging a noise induced
83 hearing loss shall set forth the name of the employer or
84 employers and the time worked for each, and the
85 commissioner shall allocate to and divide any charges
86 resulting from such claim among such employers with
87 whom the claimant sustained exposure to hazardous
88 noise for as much as sixty days during the period of three
89 years immediately preceding the date of last exposure.
90 The allocation shall be based upon the time of exposure
91 with each employer. In determining the allocation, the
92 commissioner shall consider all the time of employment
93 by each employer during which the claimant was so
94 exposed and not just the time within such three-year
95 period, under the same allocation as is applied in
96 occupational pneumoconiosis cases.

97 (h) The commissioner shall provide, consistent with
98 current practice, for prompt referral of such claims for
99 evaluation, for all medical reimbursement, and for
100 prompt authorization of hearing enhancement devices.

101 (i) The provisions of this section and the amendments
102 to section six of the article insofar as applicable to
103 permanent partial disabilities for hearing loss shall be
104 operative as to any claim filed after thirty days from the
105 effective date of this section.

§23-4-6c. Benefits payable to certain sheltered workshop employees; limitations.

1 Notwithstanding the provisions of section six, six-a or
2 six-b of this article or any other provision of this
3 chapter, the minimum weekly benefit payments under
4 subsection (b), section one of this article shall not apply

5 to employees who work at nonprofit "workshops" as
6 defined in section one, article one, chapter five-a of this
7 code. When compensation is due any such employee, the
8 weekly benefits payable hereunder to such employee
9 may not exceed seventy percent of that employee's
10 actual weekly wages, and in no event may the average
11 weekly wage in West Virginia be the basis upon which
12 to compute the benefits of temporary total disability to
13 employees working for less than the minimum wage.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority.

1 (a) The Legislature hereby finds and declares that
2 injured claimants should receive the type of treatment
3 needed as promptly as possible; that overpayments of
4 temporary total disability benefits with the resultant
5 hardship created by the requirement of repayment
6 should be minimized; and that to achieve these two
7 objectives, it is essential that the commissioner establish
8 and operate a systematic program for the monitoring of
9 injury claims where the disability continues longer than
10 might ordinarily be expected.

11 (b) In view of the foregoing findings, the commis-
12 sioner, in consultation with medical experts, shall
13 establish guidelines as to the anticipated period of
14 disability for the various types of injuries. Each injury
15 claim in which temporary total disability continues
16 beyond the anticipated period of disability so established
17 for the injury involved shall be reviewed by the
18 commissioner. If satisfied, after reviewing the medical
19 evidence, that the claimant would not benefit by an
20 independent medical evaluation, the commissioner shall
21 mark the claim file accordingly and shall diary such
22 claim file as to the next date for required review which
23 shall not exceed sixty days. If the commissioner
24 concludes that the claimant might benefit by an
25 independent medical evaluation, he shall proceed as
26 specified in subsections (d) and (e) of this section.

27 (c) When the authorized treating physician concludes
28 that the claimant has either reached his maximum
29 degree of improvement or is ready for disability
30 evaluation, or when the claimant has returned to work,
31 such authorized treating physician may recommend a
32 permanent partial disability award for residual impair-
33 ment relating to and resulting from the compensable
34 injury, and the following provisions shall govern and
35 control:

36 (1) If the authorized treating physician recommends
37 a permanent partial disability award of fifteen percent
38 or less, the commissioner shall enter an award of
39 permanent partial disability benefits based upon such
40 recommendation and all other available information,
41 and the claimant's entitlement to temporary total
42 disability benefits shall cease upon the entry of such
43 award unless previously terminated under the provi-
44 sions of subsection (e) of this section.

45 (2) If, however, the authorized treating physician
46 recommends a permanent partial disability award in
47 excess of fifteen percent, or recommends a permanent
48 total disability award, the claimant's entitlement to
49 temporary total disability benefits shall cease upon the
50 receipt by the commissioner of such report and the
51 commissioner shall refer the claimant to a physician or
52 physicians of his selection for independent evaluation
53 prior to the entry of a permanent disability award:
54 *Provided*, That the claimant shall thereupon receive
55 benefits which shall then be at the permanent partial
56 disability rate as provided in subdivision (e), section six
57 of this article until the entry of a permanent disability
58 award, and which amount of such benefits paid prior to
59 the receipt of such report shall be considered and
60 deemed to be payment of the permanent disability
61 award then granted, if any. In the event that benefits
62 actually paid exceed the amount granted by the
63 permanent partial disability award, claimant shall be
64 entitled to no further benefits by such award but shall
65 not be liable by offset or otherwise for the excess paid.

66 (d) When the commissioner concludes that an inde-
67 pendent medical evaluation is indicated, or that a

68 claimant may be ready for disability evaluation in
69 accordance with other provisions of this chapter, he
70 shall refer the claimant to a physician or physicians of
71 his selection for examination and evaluation. If the
72 physician or physicians so selected recommend con-
73 tinued, additional or different treatment, the recommen-
74 dation shall be relayed to the claimant and his then
75 treating physician and the recommended treatment may
76 be authorized by the commissioner.

77 (e) Notwithstanding any provision in subsection (c) of
78 this section, the commissioner shall enter a notice
79 suspending the payment of temporary total disability
80 benefits but providing a reasonable period of time
81 during which the claimant may submit evidence
82 justifying the continued payment of temporary total
83 disability benefits when:

84 (1) The physician or physicians selected by the
85 commissioner conclude that the claimant has reached
86 his maximum degree of improvement; or

87 (2) When the authorized treating physician shall
88 advise the commissioner that the claimant has reached
89 his maximum degree of improvement or that he is ready
90 for disability evaluation and when the authorized
91 treating physician has not made any recommendation
92 with respect to a permanent disability award as
93 provided in subsection (c) of this section; or

94 (3) When other evidence submitted to the commis-
95 sioner justifies a finding that the claimant has reached
96 his maximum degree of improvement: *Provided*, That in
97 all cases a finding by the commissioner that the
98 claimant has reached his maximum degree of improve-
99 ment shall terminate the claimant's entitlement to
100 temporary total disability benefits regardless of whether
101 the claimant has been released to return to work:
102 *Provided, however*, That under no circumstances shall a
103 claimant be entitled to receive temporary total disability
104 benefits either beyond the date he is released to return
105 to work or beyond the date he actually returns to work.

106 In the event that the medical or other evidence
107 indicates that claimant has a permanent disability,

108 claimant shall thereupon receive benefits which shall
109 then be at the permanent partial disability rate as
110 provided in subdivision (e), section six of this article
111 until entry of a permanent disability award, pursuant
112 to an evaluation by a physician or physicians selected
113 by the commissioner, and which amount of benefits shall
114 be considered and deemed to be payment of the
115 permanent disability award then granted, if any. In the
116 event that benefits actually paid exceed the amount
117 granted under the permanent disability award, claimant
118 shall be entitled to no further benefits by such
119 order but shall not be liable by offset or otherwise for
120 the excess paid.

121 (f) Notwithstanding the anticipated period of disabil-
122 ity established pursuant to the provisions of subsection
123 (b) of this section, whenever in any claim temporary
124 total disability shall continue longer than one hundred
125 twenty days from the date of injury (or from the date
126 of the last preceding examination and evaluation
127 pursuant to the provisions of this subsection or pursuant
128 to the directions of the commissioner under other
129 provisions of this chapter), the commissioner shall refer
130 the claimant to a physician or physicians of his selection
131 for examination and evaluation in accordance with the
132 provisions of subsection (d) of this section and the
133 provisions of subsection (e) shall be fully applicable:
134 *Provided*, That the requirement of mandatory examina-
135 tions and evaluations pursuant to the provisions of this
136 subsection (f) shall not apply to any claimant who
137 sustained a brain stem or spinal cord injury with
138 resultant paralysis or an injury which resulted in an
139 amputation necessitating a prosthetic appliance.

140 (g) The provisions of this section are in addition to and
141 in no way in derogation of the power and authority
142 vested in the commissioner by other provisions of this
143 chapter or vested in the employer to have a claimant
144 examined by a physician or physicians of its selection
145 and at its expense, or vested in the claimant or employer
146 to file a protest, under other provisions of this chapter.

**§23-4-8c. Occupational pneumoconiosis board reports
and distribution thereof; presumption; find-**

**ings required of board; objection to findings;
procedure thereon.**

1 (a) The occupational pneumoconiosis board, as soon as
2 practicable, after it has completed its investigation,
3 shall make its written report, to the commissioner, of its
4 findings and conclusions on every medical question in
5 controversy, and the commissioner shall send one copy
6 thereof to the employee or claimant and one copy to the
7 employer, and the board shall also return to and file
8 with the commissioner all the evidence as well as all
9 statements under oath, if any, of the persons who appear
10 before it on behalf of the employee or claimant, or
11 employer and also all medical reports and x-ray
12 examinations produced by or on behalf of the employee
13 or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased
15 employee has been exposed to the hazard of inhaling
16 minute particles of dust in the course of and resulting
17 from his employment for a period of ten years during
18 the fifteen years immediately preceding the date of his
19 last exposure to such hazard and that such claimant or
20 deceased employee has sustained a chronic respiratory
21 disability, then it shall be presumed that such claimant
22 is suffering or such deceased employee was suffering at
23 the time of his death from occupational pneumoconiosis
24 which arose out of and in the course of his employment.
25 This presumption shall not be conclusive.

26 (c) The findings and conclusions of the board shall set
27 forth, among other things, the following:

28 (1) Whether or not the claimant or the deceased
29 employee has contracted occupational pneumoconiosis,
30 and if so, the percentage of permanent disability
31 resulting therefrom.

32 (2) Whether or not the exposure in the employment
33 was sufficient to have caused the claimant's or deceased
34 employee's occupational pneumoconiosis or to have
35 perceptibly aggravated an existing occupational pneu-
36 moconiosis, or other occupational disease.

37 (3) What, if any, physician appeared before the board

38 on behalf of the claimant or employer, and what, if any,
39 medical evidence was produced by or on behalf of the
40 claimant or employer.

41 If either party objects to the whole or any part of such
42 findings and conclusions of the board, he shall file with
43 the commissioner, within fifteen days from receipt of
44 such copy to him, unless for good cause shown, the
45 commissioner extends such time, his objections thereto
46 in writing, specifying the particular statements of the
47 board's findings and conclusions to which he objects.
48 The filing of an objection within the time specified is
49 hereby declared to be a condition of the right to litigate
50 such findings and hence jurisdictional. After the time
51 has expired for the filing of objections to the findings
52 and conclusions of the board, the commissioner shall
53 proceed to act as provided in this chapter. If after the
54 time has expired for the filing of objections to the
55 findings and conclusions of the board no objections have
56 been filed, the report of a majority of the board of its
57 findings and conclusions on any medical question shall
58 be taken to be plenary and conclusive evidence of the
59 findings and conclusions therein stated. If objection has
60 been filed to the findings and conclusions of the board,
61 notice thereof shall be given to the board, and the
62 members thereof joining in such findings and conclu-
63 sions shall appear at the time fixed by the commissioner
64 for the hearing to submit to examination and cross-
65 examination in respect to such findings and conclusions.
66 At such hearing, evidence to support or controvert the
67 findings and conclusions of the board shall be limited
68 to examination and cross-examination of the members
69 of the board, and to the taking of testimony of other
70 qualified physicians and roentgenologists.

**§23-4-9b. Preexisting impairments not considered in
fixing amount of compensation.**

1 Where an employee has a definitely ascertainable
2 impairment resulting from an occupational or a nonoc-
3 cupational injury, disease, or any other cause, whether
4 or not disabling, and such employee shall thereafter
5 receive an injury in the course of and resulting from his
6 employment, unless such injury results in total perman-

7 ent disability within the meaning of section one, article
8 three of this chapter, such impairment, and the effect
9 thereof, and an aggravation thereof, shall not be taken
10 into consideration in fixing the amount of compensation
11 allowed by reason of such injury, and such compensation
12 shall be awarded only in the amount that would have
13 been allowable had such employee not had such preex-
14 isting impairment. Nothing in this section shall be
15 construed to require that the degree of such preexisting
16 impairment be definitely ascertained or rated prior to
17 the injury received in the course of and resulting from
18 such employee's employment or that benefits must have
19 been granted or paid for such preexisting impairment.
20 The degree of such preexisting impairment may be
21 established at any time by competent medical or other
22 evidence. Notwithstanding the foregoing provisions of
23 this section, if such definitely ascertainable preexisting
24 impairment resulted from an injury or disease pre-
25 viously held compensable and such impairment had not
26 been rated, benefits for such impairment shall be
27 payable to the claimant by or charged to the employer
28 in whose employ the injury or disease occurred. The
29 employee shall also receive from the second injury
30 reserve created by section one, article three of this
31 chapter the difference, if any, in the benefit rate
32 applicable in the more recent claim and the prior claim.

§23-4-15. Application for benefits.

1 To entitle any employee or dependent of a deceased
2 employee to compensation under this chapter, other than
3 for occupational pneumoconiosis or other occupational
4 disease, the application therefor must be made on the
5 form or forms prescribed by the commissioner and filed
6 in the office of the commissioner within two years from
7 and after the injury or death, as the case may be, and
8 unless so filed within such two-year period, the right to
9 compensation under this chapter shall be forever
10 barred, such time limitation being hereby declared to
11 be a condition of the right and hence jurisdictional, and
12 all proofs of dependency in fatal cases must likewise be
13 filed with the commissioner within two years from and
14 after the death. In case the employee is mentally or

15 physically incapable of filing such application, it may be
16 filed by his attorney or by a member of his family.

17 To entitle any employee to compensation for occupa-
18 tional pneumoconiosis under the provisions hereof, the
19 application therefor must be made on the form or forms
20 prescribed by the commissioner and filed in the office
21 of the commissioner within three years from and after
22 the last day of the last continuous period of sixty days
23 or more during which the employee was exposed to the
24 hazards of occupational pneumoconiosis or within three
25 years from and after the employee's occupational
26 pneumoconiosis was made known to him by a physician
27 or which he should reasonably have known, whichever
28 shall last occur, and unless so filed within such three-
29 year period, the right to compensation under this
30 chapter shall be forever barred, such time limitation
31 being hereby declared to be a condition of the right and
32 hence jurisdictional, or, in the case of death, the
33 application shall be filed as aforesaid by the dependent
34 of such employee within two years from and after such
35 employee's death, and such time limitation is a condition
36 of the right and hence jurisdictional.

37 To entitle any employee to compensation for occupa-
38 tional disease other than occupational pneumoconiosis
39 under the provisions hereof, the application therefor
40 must be made on the form or forms prescribed by the
41 commissioner and filed in the office of the commissioner
42 within three years from and after the day on which the
43 employee was last exposed to the particular occupational
44 hazard involved or within three years from and after the
45 employee's occupational disease was made known to him
46 by a physician or which he should reasonably have
47 known, whichever shall last occur, and unless so filed
48 within such three-year period, the right to compensation
49 under this chapter shall be forever barred, such time
50 limitation being hereby declared to be a condition of the
51 right and hence jurisdictional, or, in case of death, the
52 application shall be filed as aforesaid by the dependent
53 of such employee within two years from and after such
54 employee's death, and such time limitation is a condition
55 of the right and hence jurisdictional.

§23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.

1 If a claim for occupational pneumoconiosis benefits be
2 filed by an employee within three years from and after
3 the last day of the last continuous period of sixty days
4 exposure to the hazards of occupational pneumoconiosis,
5 the commissioner shall determine whether the claimant
6 was exposed to the hazards of occupational pneumoco-
7 niosis for a continuous period of not less than sixty days
8 while in the employ of the employer within three years
9 prior to the filing of his claim, whether in the state of
10 West Virginia the claimant was exposed to such hazard
11 over a continuous period of not less than two years
12 during the ten years immediately preceding the date of
13 his last exposure thereto and whether the claimant was
14 exposed to such hazard over a period of not less than
15 ten years during the fifteen years immediately preced-
16 ing the date of his last exposure thereto. If a claim for
17 occupational pneumoconiosis benefits be filed by an
18 employee within three years from and after the em-
19 ployee's occupational pneumoconiosis was made known
20 to him by a physician or otherwise should have reason-
21 ably been known to him, the commissioner shall
22 determine whether the claimant filed his application
23 within said period and whether in the state of West
24 Virginia the claimant was exposed to such hazard over
25 a continuous period of not less than two years during
26 the ten years immediately preceding the date of last
27 exposure thereto and whether the claimant was exposed
28 to such hazard over a period of not less than ten years
29 during the fifteen years immediately preceding the date
30 of last exposure thereto. If a claim for occupational
31 pneumoconiosis benefits be filed by a dependent of a
32 deceased employee, the commissioner shall determine
33 whether the deceased employee was exposed to the
34 hazards of occupational pneumoconiosis for a continuous
35 period of not less than sixty days while in the employ
36 of the employer within ten years prior to the filing of
37 the claim, whether in the state of West Virginia the
38 deceased employee was exposed to such hazard over a
39 continuous period of not less than two years during the

40 ten years immediately preceding the date of his last
41 exposure thereto and whether the claimant was exposed
42 to such hazard over a period of not less than ten years
43 during the fifteen years immediately preceding the date
44 of his last exposure thereto. The commissioner shall also
45 determine such other nonmedical facts as may in his
46 opinion be pertinent to a decision on the validity of the
47 claim.

48 The commissioner shall enter an order with respect
49 to such nonmedical findings within ninety days follow-
50 ing receipt by the commissioner of both the claimant's
51 application for occupational pneumoconiosis benefits
52 and the physician's report filed in connection therewith,
53 and shall give each interested party notice in writing of
54 his findings with respect to all such nonmedical facts
55 and such findings and such action of the commissioner
56 shall be final unless the employer, employee, claimant
57 or dependent shall, within fifteen days after receipt of
58 such notice, object to such findings, and unless an
59 objection is filed within such fifteen-day period, such
60 findings shall be forever final, such time limitation
61 being hereby declared to be a condition of the right to
62 litigate such findings and hence jurisdictional. Upon
63 receipt of such objection, the commissioner shall set a
64 hearing as provided in section one, article five of this
65 chapter. In the event of an objection to such findings by
66 the employer, the claim, shall, notwithstanding the fact
67 that one or more hearings may be held with respect to
68 such objection, mature for reference to the occupational
69 pneumoconiosis board with like effect as if the objection
70 had not been filed. If the commissioner concludes after
71 the protest hearings that the claim should be dismissed,
72 a final order of dismissal shall be entered, which final
73 order shall be subject to appeal in accordance with the
74 provisions of section one, article five of this chapter. If
75 the commissioner concludes after such protest hearings
76 that the claim should be referred to the occupational
77 pneumoconiosis board for its review, the order entered
78 shall be interlocutory only and may be appealed only in
79 conjunction with an appeal from a final order with
80 respect to the findings of the occupational pneumoconi-
81 osis board.

ARTICLE 5. REVIEW.

- §23-5-1. Notice by commissioner of decision; objections and hearing; appeal.
§23-5-1b. Refusal to reopen claim; notice; objection.
§23-5-1d. Refusal of modification; notice; objection.
§23-5-1e. Time periods for objections and appeals; extensions.
§23-5-3. Appeal to board; procedure; remand and supplemental hearing.
§23-5-4. Appeals from final decisions of board to supreme court of appeals; procedures; costs.

§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.

1 The commissioner shall have full power and authority
2 to hear and determine all questions within his jurisdic-
3 tion, but upon the making or refusing to make any
4 award, or upon the making of any modification or
5 change with respect to former findings or orders, as
6 provided by section sixteen, article four of this chapter,
7 the commissioner shall give notice, in writing, to the
8 employer, employee, claimant or dependent, as the case
9 may be, of his action, which notice shall state the time
10 allowed for filing an objection to such finding, and such
11 action of the commissioner shall be final unless the
12 employer, employee, claimant or dependent shall, within
13 thirty days after the receipt of such notice, object in
14 writing, to such finding, and unless an objection is filed
15 within such thirty-day period, such finding or action
16 shall be forever final, such time limitation being hereby
17 declared to be a condition of the right to litigate such
18 finding or action and hence jurisdictional. Upon receipt
19 of such objection the commissioner shall, within fifteen
20 days from receipt thereof, set a time and place for the
21 hearing of evidence. Any such hearing may be con-
22 ducted by the commissioner or his duly authorized
23 representative at the county seat of the county wherein
24 the injury occurred, or at any other place which may
25 be agreed upon by the interested parties, and in the
26 event the interested parties cannot agree, and it appears
27 in the opinion of the commissioner that the ends of
28 justice require the taking of evidence elsewhere, then at
29 such place as the commissioner may direct, having due
30 regard for the convenience of witnesses. Both the
31 employer and claimant shall be notified of such hearing
32 at least ten days in advance, and the hearing shall be
33 held within thirty days after the filing of objection to

34 the commissioner's findings as hereinabove provided,
35 unless such hearing be postponed by agreement of the
36 parties or by the commissioner for good cause. The
37 evidence taken at such hearing shall be transcribed and
38 become part of the record of the proceedings, together
39 with the other records thereof in the commissioner's
40 office. At any time within thirty days after hearing, if
41 the commissioner is of the opinion that the facts have
42 not been adequately developed at such hearing, he may
43 order supplemental hearing upon due notice to the
44 parties. After final hearing the commissioner shall,
45 within thirty days, render his decision affirming,
46 reversing or modifying, his former action, which shall
47 be final: *Provided*, That the claimant or the employer
48 may apply to the appeal board herein created for a
49 review of such decision; but no appeal or review shall
50 lie unless application therefor be made within thirty
51 days of receipt of notice of the commissioner's final
52 action, or in any event within sixty days of the date of
53 such final action, regardless of notice, and unless the
54 application for appeal or review is filed within the time
55 specified, no such appeal or review shall be allowed,
56 such time limitation being hereby declared to be a
57 condition of the right to such appeal or review and hence
58 jurisdictional.

59 After protest by the employer only to any finding or
60 determination of the commissioner made on or after
61 July one, one thousand nine hundred seventy-one, and
62 the employer does not prevail in its protest and, in the
63 event the claimant is required to attend a hearing by
64 subpoena or agreement of counsel or at the express
65 direction of the commissioner, then such claimant in
66 addition to reasonable traveling and other expenses
67 shall be reimbursed for loss of wages incurred by him
68 in attending such hearing.

§23-5-1b. Refusal to reopen claim; notice; objection.

1 If, however, in any case in which application for
2 further adjustment of a claim is filed under the next
3 preceding section, it shall appear to the commissioner
4 that such application fails to disclose a progression or
5 aggravation in the claimant's condition, or some other

6 fact or facts which were not theretofore considered by
7 the commissioner in his former findings, and which
8 would entitle such claimant to greater benefits than he
9 has already received, the commissioner shall, within
10 sixty days from the receipt of such application, notify
11 the claimant and the employer that such application
12 fails to establish a prima facie cause for reopening the
13 claim. Such notice shall be in writing stating the reasons
14 for denial and the time allowed for objection to such
15 decision of the commissioner. The claimant may, within
16 thirty days after receipt of such notice, object in writing
17 to such finding and unless the objection is filed within
18 such thirty-day period, no such objection shall be
19 allowed, such time limitation being hereby declared to
20 be a condition of the right to such objection and hence
21 jurisdictional. Upon receipt of an objection, the commis-
22 sioner shall afford the claimant an evidentiary hearing
23 as provided in section one of this article.

§23-5-1d. Refusal of modification; notice; objection.

1 If in any such case it shall appear to the commissioner
2 that such application fails to disclose some fact or facts
3 which were not theretofore considered by the commis-
4 sioner in his former findings, and which would entitle
5 such employer to any modification of said previous
6 award, the commissioner shall, within sixty days from
7 the receipt of such application, notify the claimant and
8 employer that such application fails to establish a just
9 cause for modification of said award. Such notice shall
10 be in writing stating the reasons for denial and the time
11 allowed for objection to such decision of the commis-
12 sioner. The employer may, within thirty days after
13 receipt of said notice, object in writing to such decision,
14 and unless the objection is filed within such thirty-day
15 period, no such objection shall be allowed, such time
16 limitation being hereby declared to be a condition of the
17 right to such objection and hence jurisdictional. Upon
18 receipt of such objection, the commissioner shall afford
19 the employer an evidentiary hearing as provided in
20 section one of this article.

**§23-5-1e. Time periods for objections and appeals;
extensions.**

1 Notwithstanding the fact that the time periods set
2 forth for objections, protests, and appeals to or from the
3 workers' compensation appeal board, are jurisdictional,
4 such periods may be extended or excused upon appli-
5 cation of either party within a period of time equal to
6 the applicable period by requesting an extension of such
7 time period showing good cause or excusable neglect,
8 accompanied by the objection, protest, or appeal
9 petition. In exercising such discretion the commissioner,
10 appeal board, or court, as the case may be, shall consider
11 whether the applicant was represented by counsel and
12 whether timely and proper notice was actually received
13 by the applicant or the applicant's representative.

**§23-5-3. Appeal to board; procedure; remand and supple-
mental hearing.**

1 Any employer, employee, claimant, or dependent, who
2 shall feel aggrieved at any final action of the commis-
3 sioner taken after a hearing held in accordance with the
4 provisions of section one of this article, shall have the
5 right to appeal to the board created in section two of
6 this article for a review of such action. The aggrieved
7 party shall file a written notice of appeal with the
8 compensation commissioner, directed to such board,
9 within thirty days after receipt of notice of the action
10 complained of, or in any event, regardless of notice,
11 within sixty days after the date of the action complained
12 of, and unless the notice of appeal is filed within the
13 time specified, no such appeal shall be allowed, such
14 time limitation being hereby declared to be a condition
15 of the right to such appeal and hence jurisdictional; and
16 the commissioner shall notify the other party imme-
17 diately upon the filing of a notice of appeal. The
18 commissioner shall forthwith make up a transcript of
19 the proceedings before him and certify and transmit the
20 same to the board. In such certificate, he shall incorpo-
21 rate a brief recital of the proceedings therein had and
22 recite each order entered and the date thereof. The
23 board shall review the action of the commissioner
24 complained of at its next meeting after the filing of
25 notice of appeal, provided such notice of appeal shall
26 have been filed thirty days before such meeting of the

27 board, unless such review be postponed by agreement
28 of parties or by the board for good cause. The board
29 shall set a time and place for the hearing of arguments
30 on each claim and shall notify the interested parties
31 thereof, and briefs may be filed by the interested parties
32 in accordance with the rules of procedure prescribed by
33 the board. And thereupon, after a review of the case, the
34 board shall sustain the finding of the commissioner or
35 enter such order or make such award as the commis-
36 sioner should have made, stating in writing its reasons
37 therefor, and shall thereupon certify the same to the
38 commissioner, who shall proceed in accordance there-
39 with. Or, instead of affirming or reversing the commis-
40 sioner as aforesaid, the board may, upon motion of either
41 party or upon its own motion, for good cause shown, to
42 be set forth in the order of the board, remand the case
43 to the commissioner for the taking of such new,
44 additional or further evidence as in the opinion of the
45 board may be necessary for a full and complete
46 development of the facts of the case. In the event the
47 board shall remand the case to the commissioner for the
48 taking of further evidence therein, the commissioner
49 shall proceed to take such new, additional or further
50 evidence in accordance with any instruction given by the
51 board, and shall take the same within thirty days after
52 receipt of the order remanding the case, giving to the
53 interested parties at least ten days' written notice of
54 such supplemental hearing, unless the taking of evi-
55 dence shall be postponed by agreement of parties, or by
56 the commissioner for good cause. After the completion
57 of such supplemental hearing, the commissioner shall,
58 within sixty days, render his decision affirming,
59 reversing or modifying his former action, which decision
60 shall be appealable to, and proceeded with by the appeal
61 board in like manner as in the first instance. The board
62 may remand any case as often as in its opinion is
63 necessary for a full development and just decision of the
64 case. The board may take evidence or consider ex parte
65 statements furnished in support of any motion to
66 remand the case to the commissioner. All evidence taken
67 by or filed with the board shall become a part of the
68 record. All appeals from the action of the commissioner

69 shall be decided by the board at the same session at
70 which they are heard, unless good cause for delay
71 thereof be shown and entered of record. In all proceed-
72 ings before the board, either party may be represented
73 by counsel.

**§23-5-4. Appeals from final decisions of board to supreme
court of appeals; procedures; costs.**

1 From any final decision of the board, including any
2 order of remand, an application for review may be
3 prosecuted by either party, or by the commissioner, to
4 the supreme court of appeals within thirty days from the
5 date thereof by the filing of a petition therefor to such
6 court against the board and the adverse party (claimant
7 or employer, as the case may be) as respondents, and
8 unless the petition for review is filed within such thirty-
9 day period, no such appeal or review shall be allowed,
10 such time limitation being hereby declared to be a
11 condition of the right to such appeal or review and hence
12 jurisdictional; and the clerk of such court shall notify
13 each of the respondents and the commissioner of the
14 filing of such petition. The board shall, within ten days
15 after receipt of such notice, file with the clerk of the
16 court the record of the proceedings had before it,
17 including all the evidence. The court or any judge
18 thereof in vacation may thereupon determine whether
19 or not a review shall be granted. And if granted to a
20 nonresident of this state, he shall be required to execute
21 and file with the clerk before such order or review shall
22 become effective, a bond, with security to be approved
23 by the clerk, conditioned to perform any judgment
24 which may be awarded against him thereon. The board
25 may certify to the court and request its decision of any
26 question of law arising upon the record, and withhold
27 its further proceeding in the case, pending the decision
28 of the court on the certified question, or until notice that
29 the court has declined to docket the same. If a review
30 be granted or the certified question be docketed for
31 hearing, the clerk shall notify the board and the parties
32 litigant or their attorneys and the commissioner, of that
33 fact by mail. If a review be granted or the certified
34 question docketed, the case shall be heard by the court

35 in the same manner as in other cases, except that
36 neither the record nor briefs need be printed. Every
37 such review granted or certified question docketed prior
38 to thirty days before the beginning of the term, shall be
39 placed upon the docket for such term. The attorney
40 general shall, without extra compensation, represent the
41 board in such cases. The court shall determine the
42 matter so brought before it and certify its decision to
43 the board and to the commissioner. The cost of such
44 proceedings on petition, including a reasonable attor-
45 ney's fee, not exceeding thirty dollars to the claimant's
46 attorney, shall be fixed by the court and taxed against
47 the employer if the latter be unsuccessful, and if the
48 claimant, or the commissioner (in case the latter be the
49 applicant for review) be unsuccessful, such costs, not
50 including attorney's fees, shall be taxed against the
51 commissioner, payable out of any funds available in his
52 hands, or shall be taxed against the claimant, in the
53 discretion of the court. But there shall be no cost taxed
54 upon a certified question.

CHAPTER 172

(S. B. 531—By Senator Jones)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to schedule of maximum disbursement of medical, surgical, dental and hospital treatment; legislative approval; charges in excess of scheduled amounts not to be made; contract by employer with hospital physician, etc., prohibited; penalties for violation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.**§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties for violation.**

1 The commissioner shall establish and alter from time
2 to time as he may determine to be appropriate a schedule
3 of the maximum reasonable amounts to be paid to phy-
4 sicians, surgeons, hospitals or other persons, firms or
5 corporations for the rendering of treatment to injured
6 employees under this chapter. The commissioner also,
7 on the first day of each regular session, and also from time
8 to time, as the commissioner may consider appropriate,
9 shall submit the schedule, with any changes thereto, to
10 the Legislature.

11 The commissioner shall disburse and pay from the fund
12 for such personal injuries to such employees as may be
13 entitled thereto hereunder as follows:

14 (a) Such sums for medicines, medical, surgical, dental
15 and hospital treatment, crutches, artificial limbs and such
16 other and additional approved mechanical appliances
17 and devices, as may be reasonably required.

18 (b) Payment for such medicine, medical, surgical,
19 dental and hospital treatment, crutches, artificial limbs
20 and such other and additional approved mechanical ap-
21 pliances and devices authorized under subdivision (a)
22 hereof may be made to the injured employee, or to the
23 person, firm or corporation who or which has rendered
24 such treatment or furnished any of the items specified
25 above, or who has advanced payment for same, as the
26 commissioner may deem proper, but no such payments
27 or disbursements shall be made or awarded by him unless
28 duly verified statements on forms prescribed by the
29 commissioner shall be filed with the commissioner within
30 two years after the cessation of such treatment or the
31 delivery of such appliances: *Provided*, That no payment
32 hereunder shall be made unless such verified statement
33 shows no charge for or with respect to such treatment
34 or for or with respect to any of the items specified above

35 has been or will be made against the injured employee
36 or any other person, firm or corporation, and when an
37 employee covered under the provisions of this chapter
38 is injured in the course of and as a result of his employ-
39 ment and is accepted for medical, surgical, dental or
40 hospital treatment, the person, firm or corporation ren-
41 dering such treatment is hereby prohibited from making
42 any charge or charges therefor or with respect thereto
43 against the injured employee or any other person, firm or
44 corporation which would result in a total charge for the
45 treatment rendered in excess of the maximum amount
46 set forth therefor in the commissioner's schedule estab-
47 lished as aforesaid.

48 (c) No employer shall enter into any contracts with
49 any hospital, its physicians, officers, agents or employees
50 to render medical, dental or hospital service or to give
51 medical or surgical attention therein to any employee for
52 injury compensable within the purview of this chapter,
53 and no employer shall permit or require any employee
54 to contribute, directly or indirectly, to any fund for the
55 payment of such medical, surgical, dental or hospital
56 service within such hospital for such compensable injury.
57 Any employer violating this section shall be liable in
58 damages to his employees as provided in section eight,
59 article two of this chapter, and any employer or hospital
60 or agent or employee thereof violating the provisions of
61 this section shall be guilty of a misdemeanor, and, upon
62 conviction thereof, shall be sentenced to pay a fine not
63 exceeding one thousand dollars or undergo imprisonment
64 not exceeding one year, or both.

65 (d) When an injury has been reported to the commis-
66 sioner by the employer without protest, the commissioner
67 may pay, or order an employer who or which made the
68 election and who or which received the permission men-
69 tioned in section nine, article two of this chapter to pay,
70 within the maximum amount provided by schedule
71 established by the commissioner as aforesaid, bills for
72 medical or hospital services without requiring the injured
73 employee to file an application for benefits.

74 (e) The commissioner shall provide for the replace-

75 ment of artificial limbs, crutches, hearing aids, eyeglasses
76 and all other mechanical appliances provided in accord-
77 ance with this section which later wear out, or which
78 later need to be refitted because of the progression of the
79 injury which caused the same to be originally furnished,
80 or which are broken in the course of and as a result of
81 the employee's employment. The fund or self-insured
82 employer shall pay for these devices, when needed, not-
83 withstanding any time limits provided by law.

CHAPTER 173

(Com. Sub. for S. B. 551—By Senators Lucht and Whitacre)

[Passed February 28, 1986; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Berkeley County to transfer a certain parcel of real estate located in Opequon District to the Berkeley County Development Authority.

Be it enacted by the Legislature of West Virginia:

BERKLEY COUNTY DEVELOPMENT AUTHORITY.

§1. Berkeley County commission authorized to transfer a parcel of real estate to the Berkeley County Development Authority.

1 The Legislature hereby recognizes that industrial de-
2 velopment is necessary for the economic welfare of the
3 people of Berkeley County. Accordingly, the Legislature
4 hereby finds and declares that the transfer of land belong-
5 ing to Berkeley County to the Berkeley County Develop-
6 ment Authority is in furtherance of such development
7 and promotes the general welfare of the public and,
8 therefore, is a public purpose.

9 The county commission of Berkeley County is hereby
10 authorized and empowered to transfer and convey unto
11 the Berkeley County Development Authority all that
12 certain tract or parcel of land situate in Opequon District
13 of Berkeley County, West Virginia, and being all of what

14 is presently known as the Mid-Atlantic Industrial Park
15 as the same appears in Plat Cabinet 2, on Slide 79, in the
16 office of the Clerk of the County Commission of Berkeley
17 County, West Virginia, together with any other contiguous
18 tracts or parcels of land comprising the Mid-Atlantic
19 Industrial Park now owned by such Commission.

CHAPTER 174

(Com. Sub. for S. B. 573—By Senators Jones and Jarrell)

[Passed March 6, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize and empower the board of trustees of Cabell county general hospital or its delegate to create a nonprofit corporation under the general laws of West Virginia, to authorize the county commission of Cabell County, West Virginia, and the city council of Huntington, West Virginia, to transfer their respective interests in Cabell county general hospital to said private nonprofit corporation, and to repeal chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five.

Be it enacted by the Legislature of West Virginia:

CABELL COUNTY GENERAL HOSPITAL.

- §1. Board of trustees of Cabell county general hospital authorized to create a private nonprofit corporation.
 - §2. County commission of Cabell County and the city council of the city of Huntington authorized to transfer title to Cabell county general hospital to a private nonprofit corporation.
 - §3. Chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five, repealed prospectively.
 - §4. Severability.
 - §5. Effective date.
- §1. **Board of trustees of Cabell county general hospital authorized to create a private nonprofit corporation.**

1 The board of trustees of Cabell county general hospital,
2 created by chapter one hundred fifty-seven, acts of the
3 Legislature, regular session, one thousand nine hundred

4 forty-five, as amended, is hereby authorized and
5 empowered to apply under the general laws of the state of
6 West Virginia to create a private nonprofit corporation and
7 to perform all necessary acts in connection therewith,
8 including, but not limited to, seeking tax exempt status for
9 said private nonprofit corporation and to applying for and
10 securing any necessary licenses, certificates of need,
11 franchises, or other governmental approvals needed to do
12 business as a hospital and as a health care provider.

§2. County commission of Cabell County and the city council of the city of Huntington authorized to transfer title to Cabell county general hospital to a private nonprofit corporation.

1 Inasmuch as the county commission of Cabell County,
2 West Virginia, and the city council of the city of
3 Huntington, West Virginia, hold title to the assets of Cabell
4 county general hospital by virtue of chapter one hundred
5 fifty-seven, acts of the Legislature, regular session, one
6 thousand nine hundred forty-five, and said county
7 commission of Cabell County, West Virginia, and said city
8 council are desirous of transferring title to said assets to the
9 private nonprofit corporation to be formed by the board of
10 trustees of Cabell county general hospital in order to enable
11 said hospital to serve more fully the health care needs of
12 said city and county and inasmuch as a disposition of said
13 assets by public auction would be impracticable and the
14 objectives might not be accomplished by sale at auction,
15 said county commission of Cabell County, and said city
16 council of Huntington are hereby authorized and
17 empowered to transfer any and all of their respective rights,
18 titles and interests to all of the assets, tangible and
19 intangible, real, personal and mixed, and wheresoever
20 located, of Cabell county general hospital to the private
21 nonprofit corporation to be formed by said board of
22 trustees, (including specifically that certain tract or parcel
23 of land situate in the city of Huntington, Cabell County,
24 West Virginia, which was conveyed unto the county court of
25 Cabell County by Emma H. Darnall, unmarried, and others,
26 by deed dated the twenty-eighth day of June, one thousand
27 nine hundred forty-three, and recorded in the office of the
28 clerk of the county court of Cabell County, West Virginia, in

29 deed book 333, page 102, which tract is particularly
30 described as follows:

31 All of that certain lot, tract, piece or parcel of ground,
32 with the improvements and buildings thereon situate and
33 appurtenances thereunto belonging or in anywise
34 appertaining, situate, lying and being in the city of
35 Huntington, Cabell County, West Virginia, and more
36 particularly bounded and described as follows, to wit:
37 BEGINNING at the point of intersection of the east line
38 of Sixteenth Street with the south line of a 10 foot alley lying
39 south of and parallel to Thirteenth Avenue, as said point of
40 intersection is shown and fixed on a map of the Holderby
41 Addition, a copy of which map is of record in the Cabell
42 County Court Clerk's Office in Map Book No. 2, as Map No.
43 17; thence with said alley line N. 78 deg. E. 519.35 feet to a
44 point in the west line of the 10 foot alley which lies west of
45 the parallel to Elm Street; thence with said alley line S. 12
46 deg. E. 373.81 feet; thence continuing with said alley line
47 which is now the south line of said alley N. 78 deg. E. 116.33
48 feet to a point in the west line of said Elm Street; thence
49 with said line S. 12 deg. E. 30 feet; thence crossing the south
50 end of Elm Street and with the south line of the 10 foot alley
51 south of and parallel to Fourteenth Avenue N. 78 deg. E.
52 571.55 feet to a point in the west line of Seventeenth Street;
53 thence with said line S. 3 deg. 25' E. 219.66 feet; thence
54 leaving said line of Seventeenth Street and with the north
55 line of Lot No. 158 as shown on a map of The Uplands, of
56 record in said Clerk's Office, S. 79 deg. 18' W. 169.55 feet to
57 the northwest corner of said lot, it being the northeast
58 corner of the property of the W. Va. Paving and Pressed
59 Brick Company; thence with the north line of said property
60 S. 79 deg. 33' W. 941.02 feet to a corner fence post in the said
61 east line of Sixteenth Street; thence with said line N. 5 deg.
62 25' W. 314.52 feet; thence N. 8 deg. 55' W. 280 feet to the
63 point of BEGINNING, and containing approximately 7.4
64 acres.) for a fair and adequate consideration, either
65 monetary or nonmonetary, and which may include public
66 benefits accruing thereto, as said parties shall agree,
67 without the necessity of conducting a public auction. In any
68 conveyance of real estate in connection therewith, said city
69 council and said county commission may provide by deed of
70 conveyance of the real property pertaining to said Cabell

71 county general hospital that the property shall be held by
72 the private nonprofit corporation for the purpose of the
73 construction, operation and maintenance of a general
74 hospital and for related health care operations and for no
75 other purpose and may provide that upon default and
76 failure of such condition that title to said real property shall
77 revert to said city council and said county commission.

§3. Chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five, repealed prospectively.

1 Inasmuch as the board of trustees of the Cabell county
2 general hospital is authorized to create a private nonprofit
3 corporation by recourse to the general laws of the state of
4 West Virginia and intends to create such corporation, and
5 inasmuch as said city council and said county commission
6 are authorized to transfer the assets of said Cabell county
7 general hospital to said nonprofit corporation and the
8 execution of said agreement between said city council and
9 said county commission and said nonprofit corporation and
10 the performance of all necessary acts and the occurrence of
11 all necessary conditions for the transfer of assets to said
12 nonprofit corporation, shall cease and determine and
13 henceforth and thereafter be dissolved and from that time
14 chapter one hundred fifty-seven, acts of the Legislature,
15 regular session, one thousand nine hundred forty-five, as
16 amended, shall stand repealed and be of no more force or
17 effect.

18 Should the authorized transfer not occur within two
19 years of the effective date of this act, this act shall cease and
20 determine and be of no further force or effect.

§4. Severability.

1 If any of the provisions of this act are held invalid, such
2 invalidation shall not affect other provisions which can be
3 given effect without the invalid provision and to this end
4 the provisions of this act are declared to be severable.

§5. Effective date.

1 Except where this legislation is expressly stated to
2 operate prospectively, the act shall become effective
3 immediately upon signing by the governor or upon its
4 becoming a law without his signature.

CHAPTER 175

(H. B. 2034—By Delegate Dalton and Delegate McCormick)

[Passed March 8, 1986; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Lincoln County, West Virginia, to meet as a levy body for the purpose of presenting to the voters of the county an election to extend the additional county levy for fire protection services and equipment in Lincoln County from between the seventh and twenty-eighth days of March until the first Thursday in June, 1986.

Be it enacted by the Legislature of West Virginia:

**LINCOLN COUNTY COMMISSION MEETING AS LEVYING BODY
EXTENDED TO CONTINUE ADDITIONAL LEVY FOR FIRE
PROTECTION SERVICES AND EQUIPMENT.**

§1. Extending time for Lincoln County commission to meet as levying body for election to continue additional levy for fire protection services and equipment.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
4 contrary, the county commission of Lincoln County is
5 hereby authorized to extend the time for its meeting as
6 a levying body and certifying its actions to the state tax
7 commissioner from between the seventh and twenty-
8 eighth days of March until the first Thursday in June,
9 one thousand nine hundred eighty-six, for the purpose
10 of submitting to the voters of Lincoln County the
11 extension of the additional county levy for fire protection
12 services and equipment in Lincoln County which was
13 approved by the voters at the general election held on
14 the second day of November, one thousand nine hundred
15 eighty-two.

CHAPTER 176

(H. B. 2010—By Delegate Hutchinson and Delegate Ryan)

[Passed March 8, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, relating to the New River Parkway Authority; members of authority; powers and duties generally; officers; bylaws; rules and regulations; and composition.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, be amended and reenacted to read as follows:

NEW RIVER PARKWAY AUTHORITY.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

1 (a) The authority consists of six voting members and
2 six ex officio nonvoting members. All members shall be
3 appointed before the first day of July, one thousand nine
4 hundred eighty-five.

5 (b) Three voting members shall be appointed by the
6 Raleigh County commission. Three voting members
7 shall be appointed by the Summers County commission.
8 No more than two of the three voting members ap-
9 pointed by a county commission may be members of the
10 same political party. The terms of the voting members
11 initially appointed by a county commission are as
12 follows: One member shall be appointed for a term of
13 one year, one member shall be appointed for a term of
14 two years and one member shall be appointed for a term
15 of three years. All successive appointments shall be for
16 a term of four years. Any voting member may be
17 removed for cause by the appointing county commission.

18 (c) The six ex officio nonvoting members are the
19 commissioner of highways or his designee, the director

20 of natural resources or his designee, the commissioner
21 of agriculture or his designee, the commissioner of
22 commerce or his designee, and, if they choose to serve
23 after being invited to do so by the county commissions
24 of Raleigh and Summers Counties, the district engineer
25 of the United States Army Corps of Engineers or his
26 designee and the supervisor of the New River gorge
27 national river office or his designee. If either or both of
28 the latter two decline to serve, then the county commis-
29 sions of Raleigh and Summers Counties shall each
30 appoint one nonvoting member. All terms of ex officio
31 nonvoting members are for four years.

32 (d) Should a vacancy occur, the person appointed to
33 fill the vacancy shall serve only for the unexpired
34 portion thereof. All members are eligible for
35 reappointment.

36 (e) There shall be an annual meeting of the authority
37 on the second Monday in July in each year and a
38 monthly meeting on a day and at such time as the
39 authority may designate in its bylaws. A special meeting
40 may be called by the president, the secretary or any two
41 members of the authority and may be held only after
42 all members are given notice thereof in writing. Three
43 members constitute a quorum for all meetings. At each
44 annual meeting of the authority, it shall elect a
45 president, vice president, secretary and treasurer. The
46 authority shall adopt such bylaws, rules and regulations
47 as are necessary for its own operation and management.
48 The authority has all but only those powers necessary,
49 incidental, convenient and advisable for the following
50 purposes:

51 (1) The preparation of a plan or plans for the New
52 River parkway;

53 (2) Advocating actions consistent with that plan or its
54 provisions to or before any governmental entity or any
55 private person or entity; and

56 (3) Otherwise acting in an advisory capacity with
57 regard to any aspects of the New River parkway upon
58 or without request to any governmental entity or private
59 person or entity. The authority may not own any of the

60 real estate or real property herein described for
61 development and may not be responsible for operating
62 or maintaining the parkway.

63 Each voting member of the authority shall be compen-
64 sated monthly by the governing bodies which appointed
65 such members in an amount to be fixed by such
66 governing body.



RESOLUTIONS

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 2

(By Mr. Speaker, Mr. Albright, and Delegate Wooton)

[Adopted January 8, 1986.]

Publicly recognizing the outstanding endurance of the recent persons held hostage at the West Virginia Penitentiary.

WHEREAS, During the week of December 30, 1985, guards were held hostage at the West Virginia Penitentiary, located in Moundsville; and

WHEREAS, During this crisis, a remarkable endurance was exhibited by those held hostage as they were subjected to excessive and mental anguish, some even unto death; and

WHEREAS, Such occurrences should not go unnoticed by the Legislature of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby deploras the hostage crisis which occurred at the West Virginia Penitentiary at Moundsville and publicly recognizes the valor of those unfortunate persons involved as hostages; and, be it

Further Resolved, That the Clerk of the House of Delegates cause copies of this resolution to be directed to surviving hostages and to the families of those deceased during this crisis.

HOUSE CONCURRENT RESOLUTION 16

(By Delegate Moore)

[Adopted February 28, 1986.]

Requesting Congress to establish a Civilian Conservation Corps modeled after the original program established during the Franklin D. Roosevelt Administration with the federal government supplying ninety percent of the funds with ten percent funding from state level sources.

WHEREAS, A significant percentage of the work force in West Virginia is currently unemployed; and

WHEREAS, The possibility of future employment for West Virginia's unemployed is at an all time low; and

WHEREAS, West Virginians want and need gainful employment; and

WHEREAS, No private employers are ever going to be capable of absorbing the multitude of unemployed West Virginians; and

WHEREAS, West Virginians are not the only United States citizens suffering from chronic and crippling unemployment; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is hereby requested to establish a Civilian Conservation Corps modeled after the first one established during the Franklin D. Roosevelt Administration to serve as a model for the remainder of the country; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to each member of the West Virginia Congressional Delegation.

HOUSE CONCURRENT RESOLUTION 38

(By Mr. Speaker, Mr. Albright, and Delegate Wooton)

[Adopted March 3, 1986.]

Extending the 1986 Regular Session of the Legislature.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the regular session of the Legislature, 1986, is hereby extended until midnight, the 11th day of March, 1986, pursuant to Section 22, Article VI of the Constitution of the State of West Virginia, for consideration of the budget, budget bills, supplementary appropriation bills, conference committee reports on bills or joint resolutions which have been adopted by at least one House on adjournment of the Senate and House of Delegates on March 8, 1986; for reconsideration of any bills vetoed or disapproved by the Governor and any budget bill or supplementary appropriation bill vetoed, disapproved, re-

duced or increased by the Governor as to any item or part or as to the entire bill.

SENATE CONCURRENT RESOLUTION 5

(By Senator Lucht)

[Adopted February 28, 1986.]

Directing the Office of Legislative Services to draft bills without unnecessary use of gender pronouns when referring to both sexes.

WHEREAS, The use of masculine gender pronouns in a bill or statute to identify both sexes can be conveniently avoided in most cases; and

WHEREAS, The State of West Virginia recognizes that males and females are of equal standing before and in the law; therefore, be it

Resolved by the Legislature of West Virginia:

That when drafting bills, the Office of Legislative Services should avoid the use of pronouns of the masculine or feminine gender to refer to either or both sexes, except where the context of a bill or section or of the paragraph or sentence clearly makes the use of a gender pronoun appropriate because of its applicability only to the gender for which the pronoun is employed; and, be it

Further Resolved, That the Office of Legislative Services is hereby directed to amend its bill drafting manual to contain the intent and purport of this resolution.

COMMITTEE SUBSTITUTE
FOR
SENATE CONCURRENT RESOLUTION 17

(By Senator Tucker)

[Adopted March 7, 1986.]

Calling on the Congress of the United States to require a United States Department of Agriculture, Soil Conservation Service, Flood Control Study of the Cheat River and that said study be conducted in conjunction with the Federal Emergency Management Agency and to begin

implementation and construction as quickly as possible.

WHEREAS, The flood of November 4th and 5th devastated the Cheat River Basin and tributaries, and there are no flood control dams or other flood control devices existing on the Cheat River or its tributaries; and

WHEREAS, The lack of flood control in existence on the Cheat River caused an exceedingly great loss of life and property and, in an effort to prevent future flooding of the Cheat River, a flood control study should be made by the S.C.S. for the entire Cheat River Basin including tributaries and utilizing where possible information or expertise of F.E.M.A. which might assist in the development of such a program for flood control; and

WHEREAS, A proper and adequate flood control study should necessarily investigate and provide for consideration of both structural and nonstructural options for flood control; and

WHEREAS, The counties that the Cheat River meanders through are rural West Virginia and have a very small tax base, and a flood control plan would preserve the maximum amount of taxable timber and farmland for future use; and

WHEREAS, It is imperative that the study and evaluation contemplated by this resolution be completed as soon as possible to provide the information necessary to develop a flood control program for immediate implementation and, most importantly, thereby permit prompt commencement of any construction projects that fall within the accepted guidelines and findings of the flood control study; and

WHEREAS, The public and private sectors must work together on flood control and any privately owned or planned lake, dam or other flood control device should be incorporated into the overall flood control program for the good of all persons and property in the Cheat River Basin; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby urged to require an S.C.S. Flood Control Study for the Cheat River to be prepared with the advice or informational input from F.E.M.A. as may be deemed appropriate with construction

beginning as soon as possible and coordinating the efforts of the public and private sectors; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Senators Robert Byrd and John Rockefeller and Congressmen Harley Staggers, Jr., Alan B. Mollohan, Robert E. Wise and Nick Joe Rahall, II.

HOUSE RESOLUTION 24

[Adopted March 9, 1986.]

Amending House Rule No. 76 and House Rule No. 77 relating to the names of the House standing committees.

Resolved by the House of Delegates:

That effective January 1, 1987, House Rule No. 76 be amended to read as follows:

76. At the commencement of each Legislature, the Speaker shall appoint the standing committees established by this rule. The Speaker shall refer bills introduced, resolutions offered, and messages, petitions, memorials and other matters presented to such committee as he shall deem appropriate to consider and report thereon.

Standing committees are hereby created as follows:

1. Committee on Agriculture and Natural Resources
2. Committee on Banking and Insurance
3. Committee on Constitutional Revision
4. Committee on Education
5. Committee on Finance
6. Committee on Government Organization
7. Committee on Health and Human Resources
8. Committee on Industry and Labor
9. Committee on Interstate Cooperation
10. Committee on the Judiciary
11. Committee on Political Subdivisons

12. Committee on Roads and Transportation

13. Committee on Rules

That effective January 1, 1987, House Rule No. 77 be amended to read as follows:

77. In general and without limitation, standing committees shall have functions and jurisdiction of subjects and other matters as follows:

1. *Committee on Agriculture and Natural Resources:* (a) Agriculture generally, including agricultural production and marketing, animal industry and animal health, adulteration of seeds, commercial feeding stuffs and commercial fertilizer, processed foods, insect pests and pesticides, soil conservation, milk and milk products, meats and meat products, agricultural extension service, etymology and plant quarantine, poultry and poultry products, and human nutrition and home economics; and (b) natural resources in general, including game and fish, forests and wildlife areas, parks and recreation, water resources and reclamation.

2. *Committee on Banking and Insurance:* (a) Banks and banking, and financial institutions generally; (b) control and regulation of all types of insurance, including organization, qualification and licensing of insurers; and (c) securities and exchanges.

3. *Committee on Constitutional Revision:* (a) Proposals to amend the Constitution of the United States or the Constitution of the State; and (b) legislation relating to constitutional conventions.

4. *Committee on Education:* (a) Education generally; (b) boards of education, and administration and control of schools; (c) textbooks and school curricula; (d) vocational education and rehabilitation; (e) qualifications, employment and tenure of teachers; (f) libraries; and (g) public schools and institutions of higher education.

5. *Committee on Finance:* (a) Tax and revenue measures increasing or decreasing the revenue or fiscal liability of the State; (b) collection of taxes and other revenue; (c) annual Budget Bills and supplementary appropriation bills; (d) proposals reducing public expenditures; (e) proposals relating

to the principal and interest of the public debt; and (f) claims against the State.

6. *Committee on Government Organization:* (a) Legislation and proposals dealing with the Executive Department of state government with respect to creation, duties and functions; consolidation and abolition; and transfer, imposition and elimination of functions and duties of departments, commissions, boards, offices and agencies; and (b) measures relating to the Legislative Department, other than apportionment of representation and redistricting for the election of members of the two houses.

7. *Committee on Health and Human Resources:* (a) Public health and public welfare generally; (b) mental health; (c) public and private hospitals and similar institutions; (d) prevention and control of communicable and infectious diseases; (e) pure food and drugs; (f) poison and narcotics; (g) correctional and penal institutions; and (h) public assistance and relief.

8. *Committee on Industry and Labor:* (a) Employment and establishment of industry; (b) labor standards; (c) labor statistics; (d) mediation and arbitration of labor disputes; (e) wages and hours of labor; (f) child labor; (g) safety and welfare of employees; and (h) industry and labor generally.

9. *Committee on Interstate Cooperation:* Constitute the House members of the West Virginia Commission on Interstate Cooperation as provided by Article 1-B, Chapter 29 of the Code.

10. *Committee on the Judiciary:* (a) Judicial proceedings, civil and criminal generally; (b) state and local courts and their officers; (c) crimes and their punishment; (d) corporations; (e) collection and enforcement of property taxes; (f) forfeited, delinquent, waste and unappropriated lands; (g) real property and estates therein; (h) domestic relations and family law; (i) revision and codification of the statutes of the State; (j) election laws; and (k) other matters of a nature not deemed properly referable to any other standing committee.

11. *Committee on Political Subdivisions:* (a) Counties, districts and municipalities generally; (b) division of the State into senatorial districts and apportionment of delegate

representation in the House; and (c) division of the State into districts for the election of representatives to Congress.

12. *Committee on Roads and Transportation:* (a) Highways, public roads, railways, canals and waterways, aeronautics, aircraft and airways; (b) motor vehicle administration and registration; (c) licensing of motor vehicle operators and chauffeurs; (d) traffic regulation and laws of the road; and (e) regulation of motor carriers of passengers and property for hire.

13. *Committee on Rules:* (a) Rules, joint rules, order of business and parliamentary rules in general; (b) recesses and final adjournments of the House and the Legislature; (c) payment of money out of the contingent or other fund of the House or creating a charge upon the same; (d) employees of and services to the House, and purchase of furniture, supplies and office equipment; (e) election and qualification of members of the House and state officers, privileges of members and officers of the House, and witnesses attending the House or any committee thereof; (f) punishment of members of the House for disorderly conduct; and punishment of any person not a member for contempt, disrespectful behavior in the presence of the House, obstructing its proceedings, and for any assault, threat or abuse of a member of the House; (g) House printing; (h) House Library, statuary and pictures, acceptance or purchase of works of art for the Capitol, purchase of books and manuscripts for the House, erection of monuments to the memory of individuals; and (i) sale of food and administration and assignment of office space in the House wing of the Capitol.

SENATE RESOLUTION 7

(By Senator R. Williams)

[Adopted January 27, 1986.]

Amending Rules of the Senate, relating to fiscal notes.

Resolved by the Senate:

That the Standing Rules of the Senate be amended by amending thereto Senate Rule 15a, to read as follows:

15a. Prior to final consideration, by any committee, in the

Senate, of any bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or other subdivision of the State or in any manner changes or modifies any existing tax or rate of taxation, such bill shall have attached thereto a fiscal note, if available, which "fiscal note" shall conform to the requirements as to form and content prescribed by the "Fiscal Note Manual," prepared and adopted by the Committee on Rules to govern preparation of fiscal notes to bills introduced in the Senate.

It shall be the responsibility of the legislator introducing a bill to obtain such note when required. Such note shall be attached to the bill when filed for introduction, if at all possible, and shall accompany any bills requiring such note when the same is reported from committee.

The jackets of all measures with fiscal notes attached or requiring such notes shall have the words "Fiscal Note" or the initials "FN" clearly stamped or endorsed thereon.

SENATE JOINT RESOLUTION 12

(By Senator Tucker)

[Adopted March 7, 1986.]

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:

- 1 That the question of ratification or rejection of an
 - 2 amendment to the Constitution of the State of West Vir-
 - 3 ginia be submitted to the voters of the State at the next
 - 4 general election to be held in the year one thousand nine
 - 5 hundred eighty-six, which proposed amendment is that
 - 6 section three, article nine thereof, be repealed.
-

7 *Resolved further*, That in accordance with the provi-
8 sions of article eleven, chapter three of the code of West
9 Virginia, one thousand nine hundred thirty-one, as amend-
10 ed, such proposed amendment is hereby numbered
11 "Amendment No. 4 or as to be determined by the Secretary
12 of State" and designated as the "Repeal of the Limitation
13 on Sheriff's Succession Amendment," and the purpose of
14 the proposed amendment is summarized as follows: "To
15 repeal section three, article nine of the State Constitution
16 which provided that a person who had been elected or
17 who had served as sheriff for all or part of two consecu-
18 tive terms was ineligible for the office of sheriff for the
19 term following the second of the two consecutive terms."

SENATE JOINT RESOLUTION 20

(Originating in the Senate Committee on Finance)

[Adopted March 8, 1986.]

Proposing an amendment to the Constitution of the State of West Virginia, providing for the levy and collection of an additional sales tax in specified amount to be paid to the state road fund and dedicated to the purposes of such fund as appropriated by the Legislature; authorizing the issuance and sale of state road bonds not exceeding the aggregate principal amount of five hundred million dollars; dedicating the additional sales tax for the payment of such bonds; providing for the issuance of additional bonds following initial issuance of the full, aggregate amount of bonds authorized, with limits thereon; providing for the competitive bidding of all brokerage fees and legal fees; 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 general election to be held in the year one thousand nine hundred eighty-six, for the purpose of presenting to the voters of the State the question

of ratification or rejection of one or more constitutional amendments, which proposed amendment is as follows:

HIGHWAY IMPROVEMENT AND BRIDGE AMENDMENT

1 The Legislature shall provide by law for the levy and
2 collection of an additional sales tax of one percent to be
3 paid to the state road fund and dedicated to the purposes
4 of such fund as appropriated by the Legislature to con-
5 struct, reconstruct, upgrade and renovate highways and
6 bridges throughout West Virginia to promote eco-
7 nomic development; to facilitate industrial access; and
8 to improve the highway network.

9 The Legislature shall have power to authorize the issu-
10 ing and selling of state bonds not exceeding the aggregate
11 principal amount of five hundred million dollars, and
12 with no more than seventy-five million dollars of such
13 aggregate principal amount to be issued or sold in any
14 fiscal year. After initial issuance of the aggregate principal
15 amount of five hundred million dollars of bonds, and to
16 the extent that through retirement of such bonds initially
17 authorized the amount of principal outstanding is less
18 than two hundred fifty million dollars in the aggregate
19 principal amount, then additional bonds are authorized
20 to be issued, but the principal amount of such bonds, to-
21 gether with the principal amount of those still outstanding
22 at such time, shall not at any one time exceed two hun-
23 dred fifty million dollars in the aggregate principal
24 amount, nor shall issuance of additional bonds in any one
25 fiscal year exceed the principal amount of seventy-five
26 million dollars. The purpose of these bonds shall be to
27 construct, reconstruct, upgrade and renovate highways
28 and bridges throughout West Virginia to promote eco-
29 nomic development; to facilitate industrial access; and to
30 improve the highway network.

31 The Legislature shall have power to authorize the issu-
32 ing and selling of state bonds to refund any bonds issued
33 and sold as aforesaid: *Provided*, That the actuarially
34 determined present value of the debt service on the re-
35 funding bonds is less than that of the bonds being re-
36 funded.

37 Whenever the Legislature shall provide for the issuance
38 of bonds under the authority of this amendment, it shall
39 provide that the additional sales tax of one percent
40 authorized by this amendment to be levied, collected and
41 dedicated to the state road fund shall first be pledged to
42 pay annually the interest on such bonds and the principal
43 thereof within and not exceeding twenty years or such
44 shorter term of years as prescribed by the Legislature,
45 notwithstanding the provisions of article ten, section four
46 of the Constitution of West Virginia. To the extent such
47 additional sales tax collected and dedicated to the state
48 road fund in any year exceeds the amount necessary to
49 pay the debt service accruing on any and all outstanding
50 bonds issued under authority of this amendment, such
51 excess moneys shall be used for the purposes of the state
52 road fund as appropriated by the Legislature. All broker-
53 age fees along with all legal fees incurred as a result of
54 this bond offering shall be bid out on a competitive bid
55 basis to those brokerage houses and nationally recognized
56 bond counsel with offices in West Virginia.

57 *Further resolved*, That in accordance with the provi-
58 sions of article eleven, chapter three of the code of West
59 Virginia, one thousand nine hundred thirty-one, as amend-
60 ed, such proposed amendment is hereby numbered
61 "Amendment No. 5 or as to be determined by the Secre-
62 tary of State" and designated as the "Highway Improve-
63 ment and Bridge Amendment" and the purpose of the
64 proposed amendment is summarized as follows: "To pro-
65 vide for the levy and collection of an additional sales tax
66 of one percent to be paid to the state road fund and dedi-
67 cated to the purposes of such fund as appropriated by the
68 Legislature to construct, reconstruct, upgrade and reno-
69 vate highways and bridges throughout West Virginia to
70 promote economic development; to facilitate industrial
71 access; and to improve the highway network; and to
72 empower the Legislature to authorize the issuing and
73 selling of state bonds the proceeds of which shall be used
74 to construct, reconstruct, upgrade and renovate highways
75 and bridges throughout West Virginia to promote eco-
76 nomic development, facilitate industrial access and im-

77 prove the highway network. These bonds shall not exceed
78 the aggregate principal amount of five hundred million
79 dollars initial issuance, with issuance of additional bonds
80 being offered whenever, through retirement, the principal
81 amount of bonds outstanding will not exceed two hun-
82 dred fifty million dollars in the aggregate; and with no
83 more than the principal amount of seventy-five million
84 dollars of bonds to be issued in any fiscal year. The addi-
85 tional sales tax of one percent shall be levied, collected
86 and dedicated to pay the interest on and principal of such
87 bonds, and any excess funds so collected and dedicated
88 shall be used for the purposes of the state road fund as
89 appropriated by the Legislature. All brokerage fees along
90 with all legal fees incurred as a result of this bond offering
91 shall be bid out on a competitive bid basis to those broker-
92 age houses and nationally recognized bond counsel with
93 offices in West Virginia.”

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1986

CHAPTER 1

(S. B. 42—Originating in the Senate Committee on Finance)

[Passed May 22, 1986; 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 revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, to the Senate Account No. 1010, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature Executive Budget Document, dated January 8, 1986, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1985-86, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 1010, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-five, known as the budget bill, be supplemented by adding thereto the following sum to the designated line item:

TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

LEGISLATIVE

4 1 — *Senate*
 5 Acct. No. 1010
 6 2 Compensation and per diem of
 7 3 Officers and Employees. \$ — \$50,000
 8 This appropriation shall be available for expenditure
 9 upon the effective date of this bill and any unexpended
 10 balance remaining in this appropriation at the end of the
 11 current fiscal year 1985-86, being hereby reappropriated
 12 for expenditure during the fiscal year 1986-87.

CHAPTER 2

(Com. Sub. for H. B. 120—By Delegate Swann)

[Passed May 22, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, and amending and adjusting the line item appropriations in Account No. 2950, State Department of Education—State Aid to Schools, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, at a regular session, setting forth therein revenue estimates and financial statements in respect of the general revenue fund; and

WHEREAS, The Governor subsequently revised such estimates and financial statements with the latest revision being submitted to the Legislature by Executive Message No. 1 of May 15, 1986, from which it appears that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 2950, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented, amended and adjusted by adding to the line items of such account the following designated sums and with such line items to thereafter read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	EDUCATIONAL	
4	<i>35—State Department of Education—</i>	
5	<i>State Aid to Schools</i>	
6	(WV Code Chapters 18 and 18A)	
7	Acct. No. 2950	
8	1	Professional Educators \$482,302,745
9	2	Service Personnel 174,446,851
10	3	Fixed Charges 70,666,256
11	4	Transportation 26,118,186
12	5	Administration 4,534,705
13	6	Other Current Expenses 42,688,724
14	7	Improved Instructional
15	8	Programs <u>28,144,279</u>
16	9	Basic Foundation
17	10	Allowances \$828,901,746
18	11	Less Local Share <u>(104,672,453)</u>
19	12	Total Basic
20	13	State Aid \$724,229,293
21	14	Loss Reduction 899,814
22	15	Professional Educators 600,781
23	16	Service Personnel 1,174,891
24	17	Increased Enrollment <u>200,000</u>
25	18	Total <u>\$727,104,779</u>
26	The purpose of this supplementary appropriation bill	
27	is to supplement, amend and adjust sums in respect to	
28	various line items in connection with the salary in-	
29	creases and related charges provided by the Legislature	
30	at first extraordinary session, 1986; such amounts to be	
31	available for expenditure in fiscal year 1986-87.	

CHAPTER 3

(Com. Sub. for H. B. 137—By Delegate Swann)

[Passed May 22, 1986; 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 revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the West Virginia Board of Regents (Control), Account No. 2790, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, at regular session, setting forth therein revenue estimates and financial statements in respect of the general revenue fund; and

WHEREAS, The Governor subsequently revised such estimates and financial statements, with the latest revision being submitted to the Legislature by Executive Message No. 1 of May 15, 1986, from which it appears that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 2790, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding thereto the following sum to the designated line item:

- | | |
|---|---|
| 1 | TITLE 2. APPROPRIATIONS. |
| 2 | Section 1. Appropriations from general revenue. |
| 3 | EDUCATIONAL |
| 4 | 24—West Virginia Board of Regents (Control) |
| 5 | Acct. No. 2790 |

- 6 1 Personal Services\$ _____ \$ 750,000
 7 The purpose of this supplementary appropriation bill
 8 is to provide additional funds and supplement the above
 9 item for summer school program purposes with such
 10 additional amount being available for expenditure in
 11 fiscal year 1986-87.

CHAPTER 4

(H. B. 152—By Delegate Farley and Delegate Fry)

[Passed May 20, 1986; in effect July 1, 1986. Vetoed by the Governor. Passed over veto.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the Insurance Commissioner, Acct. No. 6160, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, at regular session, setting forth therein revenue estimates and financial statements in respect of the general revenue fund; and

WHEREAS, The Governor subsequently revised such estimates and financial statements, with the latest revision being submitted to the Legislature by Executive Message No. 1 of May 15, 1986, from which it appears that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 6160, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding thereto the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.
 2 Section 1. Appropriations from general revenue.

3 BOARDS AND COMMISSIONS

4 86—*Insurance Commissioner*

5 (WV Code Chapter 33)

6 Acct. No. 6160

7 2 Annual Increment..... \$ 3,744

8 The purpose of this supplementary appropriation bill
 9 is to provide additional funds for annual increment
 10 purposes of the insurance commissioner, with such
 11 additional amount being available for expenditure in
 12 fiscal year 1986-87.

CHAPTER 5

(S. B. 40—Originating in the Senate Committee on Finance)

[Passed May 19, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from special revenue funds for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the Insurance Commissioner, Account No. 8016-21, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Title II, section three, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding thereto the following account, line item and sum:

1 TITLE 2. APPROPRIATIONS.
 2 Sec. 3. Appropriations from other funds.
 3 93a — *Insurance Commissioner*
 4 (WV Code Chapter 33)
 5 Acct. No. 8016-21
 6 TO BE PAID FROM SPECIAL REVENUE FUND

- 7 1 Unclassified\$ — \$600,000
 8 The purpose of this bill is to provide a supplementary
 9 appropriation for the aforesaid new account and item
 10 therein for expenditure in the fiscal year 1986-87, in
 11 accordance with Enrolled Committee Substitute for H. B.
 12 1520, enacted by the 1986 Regular Session of the
 13 Legislature.

CHAPTER 6

(S. B. 39—Originating in the Senate Committee on Finance)

[Passed May 19, 1986; in effect July 1, 1986. Vetoed by the Governor. Passed over veto.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of special revenue funds unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the Public Service Commission, Account No. 8280, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 8280, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented and amended by adding the following amounts to the designated line items:

1	TITLE 2. APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	102— <i>Public Service Commission</i>		
4	(WV Code Chapter 24)		
5	Acct. No. 8280		
6	TO BE PAID FROM SPECIAL REVENUE FUND		
7	1	Personal Services	\$ — \$315,000
8	3	Current Expenses	— 63,000
9	4	Equipment	— 30,000
10	6	Social Security	
11	7	Matching	— 23,625
12	8	Public Employees	
13	9	Retirement Matching.....	— 29,925
14	10	Public Employees Health	
15	11	Insurance.....	— 2,496

16	11a	County Plans (Unclassified)	—	343,725
17	12	TOTAL	\$ —	\$807,771
18	13	The total amount of this appropriation shall be		
19	14	paid from special revenue fund out of collections		
20	15	for special license fees from public service		
21	16	corporations as provided by law.		
22	17	Any unexpended balance remaining in the		
23	18	appropriation for "Headquarters Building Develop-		
24	19	ment" at the close of fiscal year 1985-86 is		
25	20	hereby reappropriated for expenditure during		
26	21	fiscal year 1986-87.		
27	22	The purpose of this supplementary appropriation		
28	23	bill is to supplement the Public Service		
29	24	Commission appropriation to provide funds for		
30	25	certain new duties and responsibilities as set forth		
31	26	in Enrolled Senate Bill No. 191, enacted at regular		
32	27	session, Legislature, 1986.		

CHAPTER 7

(Com. Sub. for H. B. 130—By Mr. Speaker, Mr. Albright, and Delegate Swann,
by request of the Executive)

[Passed May 22, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and causing to expire back into the state fund, general revenue of the state an amount from an item of the existing appropriation of the State Tax Department, Account No. 1800, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That an item of the total existing appropriation of Account No. 1800, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented, amended and caused to expire back in the state fund, general revenue of the state, with such item to thereafter appear as follows:

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	FISCAL		
4	18— <i>State Tax Department</i>		
5	(WV Code Chapter 11)		
6	Acct. No. 1800		
7	10	Reimbursement to	
8	11	Twenty-nine Counties	
9	12	for loss of Tax Revenue	
10	13	Due to 1985 Flood	\$ _____ \$ —0—
11	14	Total	\$ _____ \$17,835,767

12 The purpose of this supplementary appropriation is to
 13 supplement, amend and cause to expire from the
 14 designated item ten in this account and back into the
 15 state fund, general revenue of the state, the sum of
 16 \$800,000 to be thereafter available for other and further
 17 appropriations in fiscal year 1986-87.

CHAPTER 8

(S. B. 38—Originating in the Senate Committee on Finance)

[Passed May 19, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and making technical correction in the language of appropriation of section fourteen of the budget bill, designated "Sec. 14. Sinking fund deficiencies.", for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the "Sec. 14. Sinking fund deficiencies." section of

chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented, amended and technically corrected, and with the language of such section to thereafter read as follows:

TITLE 2. APPROPRIATIONS.

1 **Sec. 14. Sinking fund deficiencies.**—There is hereby
2 appropriated to the governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia housing
5 development fund which is under the supervision and
6 control of the state municipal bond commission as provided
7 by section twenty-b, article eighteen, chapter thirty-one of
8 the code, or in the funds of the state municipal bond
9 commission because of the failure of any state agency for
10 either general obligations or revenue bonds or any local
11 taxing district for general obligation bonds to remit funds
12 necessary for the payment of interest and sinking fund
13 requirements. The governor is authorized to transfer from
14 time to time such amounts to the state municipal bond
15 commission as may be necessary for these purposes.

16 The state municipal bond commission shall reimburse the
17 state of West Virginia through the governor from the first
18 remittance collected from the West Virginia housing
19 development fund or from any state agency or local taxing
20 district for which the governor advanced funds, with
21 interest at the rate carried by the bonds for security or
22 payment of which the advance was made.

23 The purpose of this supplementary appropriation bill is
24 to supplement, amend and make technical correction of
25 such section by reinserting therein certain standard
26 language of appropriation omitted therefrom and which
27 permits funding of deficiencies which might arise in respect
28 of local taxing district general obligation bonds to be paid
29 with moneys advanced from the appropriations under this
30 section, and with any such advances being required to be
31 repaid thereafter, with interest, by such local taxing district
32 from its first collections; all in support of timely payment of
33 obligations, prevention of any default, and maintenance of
34 credit standing and rating.

CHAPTER 9

(H. B. 155—By Delegate Davis and Delegate Hutchinson)

[Passed May 22, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, redesignating an item, as to purpose and providing language of appropriation under the account of the State Tax Department, Account No. 1800, appropriated as a supplemental deficiency for the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 1800, State Tax Department, Item 126 of Sec. 6. Supplemental and deficiency appropriation section of chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented, amended and an item therein be redesignated in respect of the fiscal year ending June thirtieth, one thousand nine hundred eighty-six, together with language of appropriation supplemented therein and with such redesignation of item, as to purpose, and language of appropriation in such account to thereafter appear as follows:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 6. Supplemental and deficiency appro-
- 3 priation.
- 4 FISCAL
- 5 126—*State Tax Department*
- 6 Acct. No. 1800
- 7 3 Reimbursement to Counties
- 8 4 and Levying Bodies
- 9 5 for Loss of Tax Revenue
- 10 6 Due to 1985 Flood \$_____ \$ 800,000
- 11 The tax commissioner is hereby authorized and
- 12 directed to disburse to any county government or
- 13 levying body moneys from the appropriation above,

14 being item three thereof, to reimburse such county
15 government or levying body for property tax revenue
16 losses resulting from or due to the 1985 flood in such
17 amounts as he may determine to be tax revenue losses
18 in the fiscal year 1985-86 or the fiscal year 1986-87
19 resulting from or due to the 1985 flood.

20 The tax commissioner is further hereby authorized
21 and directed to disburse money as aforesaid to counties
22 or levying bodies suffering losses of tax revenue derived
23 from apportionment of tax revenues from public utilities
24 assessed by the tax commissioner or the board of public
25 works, resulting from or due to the 1985 flood, notwith-
26 standing that such counties or levying bodies suffering
27 such losses may not be among or located in the 29
28 counties included within the declared federal disaster
29 area or areas.

30 Any unexpended balance remaining in the aforesaid
31 appropriation balance at the close of the fiscal year
32 1985-86 is reappropriated for expenditure during the
33 fiscal year 1986-87.

34 The purpose of this supplementary appropriation bill
35 is to supplement, amend, redesignate an item, being
36 item 3 of such appropriation, and add language of
37 appropriation under such account to permit expenditure
38 of the sum of \$800,000 for reimbursement to the 29 flood
39 disaster counties and to counties whose property tax
40 revenue losses were directly due to such disaster
41 through apportionment of its revenues in respect of
42 public utility assessments by the tax commissioner or
43 the board of public works, even though such county may
44 not have been actually flooded; both in respect of
45 property tax revenue reimbursements for the fiscal year
46 1985-86 or fiscal year 1986-87.

CHAPTER 10

(H. B. 102—By Mr. Speaker, Mr. Albright, and Delegate Swann,
by request of the Executive)

[Passed May 20, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten-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 four-a, all relating to providing attendant care services to severely disabled adults thereby enabling them to enter or continue in the workforce.

Be it enacted by the Legislature of West Virginia:

That section one, article ten-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 four-a, all to read as follows:

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-4. Definitions.

§18-10A-4a. Attendant care services.

§18-10A-1. Definitions.

1 As used in this article:

2 (1) "State board" means the state board of vocational
3 education.

4 (2) "Division" means the division of vocational
5 rehabilitation established by this article.

6 (3) "Director" means the director of the division of
7 vocational rehabilitation.

8 (4) "Employment handicap" means a physical or
9 mental condition which constitutes, contributes to, or if
10 not corrected will probably result in, an obstruction to
11 occupational performance.

12 (5) "Disabled individual" means any person who has
13 a substantial employment handicap.

14 (6) "Vocational rehabilitation" and "vocational rehabil-
15 itation services" means any services, provided directly
16 or through public or private instrumentalities, found by
17 the director to be necessary to compensate a disabled
18 individual for his employment handicap and to enable
19 him to engage in a remunerative occupation including,

20 but not limited to, medical and vocational diagnosis,
21 vocational guidance, counseling and placement, rehabil-
22 itation training, attendant care services, physical
23 restoration, transportation, occupational licenses,
24 occupational tools and equipment, including motor
25 vehicles, maintenance, and training books and
26 materials.

27 (7) "Rehabilitation training" means all necessary
28 training provided to a disabled individual to compensate
29 for his employment handicap including, but not limited
30 to, manual, preconditioning, prevocational, vocational,
31 and supplementary training and training provided for
32 the purpose of achieving broader or more remunerative
33 skills and capacities.

34 (8) "Physical restoration" means any medical, surgical
35 or therapeutic treatment necessary to correct or
36 substantially reduce a disabled individual's employment
37 handicap within a reasonable length of time including,
38 but not limited to, medical, psychiatric, dental and
39 surgical treatment, nursing services, hospital care not
40 to exceed ninety days, convalescent home care, drugs,
41 medical and surgical supplies, and prosthetic applian-
42 ces, but excluding curative treatment for acute or
43 transitory conditions.

44 (9) "Prosthetic appliance" means any artificial device
45 necessary to support or take the place of a part of the
46 body or to increase the acuity of a sense organ.

47 (10) "Occupational licenses" means any license, permit
48 or other written authority required by any governmen-
49 tal unit to be obtained in order to engage in an
50 occupation.

51 (11) "Maintenance" means money payments not
52 exceeding the estimated cost of subsistence during
53 vocational rehabilitation.

54 (12) "Regulations" means regulations made by the
55 director with the approval of the state board.

56 (13) "Attendant care evaluation unit" means any
57 agency certified by the division of vocational rehabili-
58 tation that employs a qualified evaluator to provide

59 evaluations and attendant referrals such as the centers
60 for independent living, the West Virginia rehabilitation
61 center and any other unit approved by the division.

62 (14) "Attendant care services" means services which
63 include, but are not limited to:

64 (a) Routine bodily functions such as bowel and bladder
65 care;

66 (b) Dressing;

67 (c) Ambulation;

68 (d) Meal preparation and consumption;

69 (e) Assistance in moving in and out of bed;

70 (f) Bathing and grooming;

71 (g) Housecleaning and laundry; and

72 (h) Any other similar activity of daily living.

73 (15) "Attendant" means a self-employed individual
74 who is trained to perform attendant care services and
75 who works as an independent contractor.

§18-10A-4a. Attendant care services.

1 The purpose of this section is to declare the intent of
2 the state to enable severely physically disabled adults to
3 enter or continue in the workforce, to enhance the
4 opportunities for disabled individuals to participate
5 fully in society through self-fulfillment and economic
6 independence.

7 The state board, through the division, shall administer
8 the provision of attendant care services as a separate
9 and distinct program to any severely physically disabled
10 adult who is present in the state at the time of filing
11 their application. The division may administer the
12 program or may enter into a contract with a private or
13 public organization to administer and operate the
14 program. If the program is administered by the
15 division, the funds shall be used as payments for
16 attendant care services, evaluations, attendant manage-
17 ment training and administrative costs. If the division
18 enters into a contract with a private or public organ-

19 ization, the private or public organization may use the
20 funds as payments for attendant care services, evalua-
21 tions, attendant management training and for reasona-
22 ble administrative costs. The administrative costs
23 allowed under the contract shall be negotiated and
24 approved by the director. The division shall establish a
25 waiting list of eligible disabled individuals if sufficient
26 funds are not available under the program. Determina-
27 tion will be made by a certified evaluation unit that such
28 adult needs fourteen or more hours of attendant care per
29 week: *Provided*, That the severely physically disabled
30 adult is eighteen years of age or older, is employed or
31 will be ready for employment within six months of the
32 time application for services is made and has a total
33 income of no more than thirty thousand dollars annu-
34 ally. The maximum income allowable will be recalcu-
35 lated each year based on changes in the consumer price
36 index. The eligible adult shall be reevaluated by a
37 certified evaluation unit at the direction of the division
38 at least once every two years to determine their
39 continuing need for attendant care services. The eligible
40 adult is responsible for hiring, firing and supervising
41 his or her attendant. Any subsidy received under the
42 provisions of this section for the purpose of providing
43 attendant care services shall not be considered income
44 to the severely disabled person for any purpose to the
45 extent permitted by federal law and regulations (IRS
46 Act of 1954) but shall supplement any other aid for
47 which the adult is eligible.

48 The division is responsible for accepting applications
49 for attendant care services from severely physically
50 disabled adults and making determinations of eligibil-
51 ity. The division shall provide for certifying evaluation
52 units and shall make determination regarding certifica-
53 tion for each evaluation unit which makes application.

54 The cost of evaluation fees, training of both attendants
55 and eligible adults in the management of attendants and
56 provision of attendant care services shall be borne by the
57 division from funds allocated for this program.

58 The division shall acquire from a certified evaluation
59 unit an evaluation of the attendant care needs for each

60 applicant. Within thirty days of the time that any
61 application for attendant care services is filed, the
62 applicant shall be notified that arrangements have been
63 made for the applicant to be evaluated by a certified
64 evaluation unit. Based upon the evaluator's information,
65 the division shall develop a plan for each eligible
66 applicant that shall include the amount of attendant
67 care time needed per week and an estimate of the length
68 of time the attendant care services will be needed.
69 Notice shall be given to the applicant and the evaluator
70 as soon as a decision has been made regarding the
71 eligibility of each applicant. If the recommendations of
72 the certified evaluation unit are not followed, the
73 division shall include the reasons for reaching its
74 decision in the notice sent to the applicant and evaluator.

75 The division shall promulgate policies and procedures
76 for the administration of this program. The division
77 shall adopt rules and regulations for full fiscal accoun-
78 tability for all appropriated funds and financial
79 assistance shall be given in accordance with a sliding
80 payment scale established by the division. The division
81 shall also establish a consumer advisory committee for
82 the purpose of advising on policies and procedures and
83 related matters involved in administration of the
84 program.

85 The division shall be responsible for establishing an
86 appeals procedure for those applicants who have been
87 denied attendant care services and for informing all
88 applicants of their right to appeal a decision of the
89 division.

CHAPTER 11

(H. B. 150—By Delegate Hatfield and Delegate Mastrantoni)

[Passed May 22, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two-b;
section nine, article six-a; section seven, article seven, all
of chapter forty-nine of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; to amend and reenact sections six, seven, eight, twelve and twenty-four, article eight, chapter sixty-one of said code; to further amend said article eight by adding thereto a new section, designated section thirteen; to amend and reenact sections one, ten and eleven, article eight-b, chapter sixty-one of said code; to further amend said article eight-b by adding thereto two new sections, designated sections thirteen and fourteen; to amend and reenact sections one, two and three, article eight-c of said chapter; to further amend said article eight-c by adding thereto two new sections, designated sections four and five; and to amend and reenact sections two and thirteen, article twelve, chapter sixty-two of said code, all relating to the protection, treatment and care of children; child abuse and neglect and criminal conviction investigations required for foster care applicants; reporting requirements in cases of suspected abuse and neglect; convicted persons under certain circumstances to pay costs of treatment of victims of contributing to the delinquency of a minor, incest, sexual offenses, cruelty to children, indecent exposure, and distributing, exhibiting and filming of sexually explicit conduct of minors; places of prostitution; penalties; receiving support from prostitution; penalties for exploitation of children; changing definitions relating to filming of sexually explicit conduct of minors and other sexual offenses; removing financial gain as an element of the offense; use of anatomically correct dolls, mannequins or drawings to assist children in testifying in cases of incest and other sex offense in certain circumstances; limits on interviews with children in certain sex offense cases; restitution for victim treatment costs; study and diagnosis required regarding danger to children and certain notifications in determining eligibility for probation and parole in certain sex offense cases; increasing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section eight, article two-b; section nine, article six-a; and section seven, article seven, all of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, be amended and reenacted; that sections six, seven, eight, twelve and twenty-four, article eight, chapter sixty-one of said code be amended and reenacted; that said article eight be further amended by adding thereto a new section, designated section thirteen; that sections one, ten and eleven, article eight-b, chapter sixty-one of said code be amended and reenacted; that said article eight-b be further amended by adding thereto two new sections, designated sections thirteen and fourteen; that sections one, two and three, article eight-c of said chapter be amended and reenacted; that said article eight-c be further amended by adding thereto two new sections, designated sections four and five; and that sections two and thirteen, article twelve, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter

- 49. Child Welfare.
- 61. Crimes and Their Punishment.
- 62. Criminal Procedure.

CHAPTER 49. CHILD WELFARE.

Article

- 2B. Duties of Commissioner of Human Services for Child Welfare.
- 6A. Reports of Children Suspected to be Abused or Neglected.
- 7. General Provisions.

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

§49-2B-8. Application for license or approval.

1 Any person or corporation, or any governmental
2 agency intending to act as a child welfare agency shall
3 apply for a license or approval to operate child care
4 facilities regulated by this article. Applications for
5 license or approval shall be made separately for each
6 child care facility to be licensed or approved.

7 The commissioner may prescribe forms and reasona-
8 ble application procedures. Before issuing a license or
9 approval, the commissioner shall investigate the facility,
10 program and persons responsible for the care of
11 children. The investigation shall also include, but not be
12 limited to, review of resource need, reputation, charac-
13 ter and purposes of applicants, a check of personnel
14 medical records, the financial records of applicants, and

15 consideration of the proposed plan for child care from
16 intake to discharge. The investigation shall also include
17 a check into the child abuse and neglect records of the
18 department relevant to the applicant and the criminal
19 conviction records of the department of public safety to
20 determine if any applicant and any of the employees of
21 the facility have a child abuse, child neglect or criminal
22 conviction record of causing harm to another person.

23 The commissioner shall make a decision on each
24 application within sixty days of its receipt and shall
25 provide to unsuccessful applicants written reasons for
26 the decision.

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE
ABUSED OR NEGLECTED.**

**§49-6A-9. Establishment of child protective services;
general duties and powers; cooperation of
other state agencies.**

1 The state department shall establish or designate in
2 every county a local child protective service to perform
3 the duties and functions set forth in this article.

4 Except in cases involving institutional abuse or cases
5 in which police investigation also appears appropriate,
6 the child protective service shall be the sole public
7 agency responsible for receiving, investigating or
8 arranging for investigation and coordinating the
9 investigation of all reports of child abuse or neglect:
10 *Provided*, That under no circumstances shall investigat-
11 ing personnel be relatives of the accused, the child or
12 the families involved. In accordance with the local plan
13 for child protective services, it shall provide protective
14 services to prevent further abuse or neglect of children
15 and provide for or arrange for and coordinate and
16 monitor the provision of those services necessary to
17 ensure the safety of children. The local child protective
18 service shall be organized to maximize the continuity of
19 responsibility, care and service of individual workers for
20 individual children and families.

21 Each local child protective service shall:

22 (1) Receive or arrange for the receipt of all reports of

23 children known or suspected to be abused or neglected
24 on a twenty-four hour, seven-day-a-week basis and cross-
25 file all such reports under the names of the children, the
26 family, any person substantiated as being an abuser or
27 neglector by investigation of the department of human
28 services, with use of such cross-filing of such person's
29 name limited to the internal use of the department;

30 (2) Provide or arrange for emergency children's
31 services to be available at all times; and

32 (3) Within twenty-four hours of notification of sus-
33 pected child abuse or neglect, commence or cause to be
34 commenced a thorough investigation of the report and
35 the child's environment.

36 In those cases in which the local child protective
37 service determines that the best interests of the child
38 require court action, the local child protective service
39 shall initiate the appropriate legal proceeding.

40 The local child protective service shall be responsible
41 for providing, directing or coordinating the appropriate
42 and timely delivery of services to any child suspected or
43 known to be abused or neglected, including services to
44 the child's family and those responsible for the child's
45 care.

46 To carry out the purposes of this article, all depart-
47 ments, boards, bureaus and other agencies of the state
48 or any of its political subdivisions and all agencies
49 providing services under the local child protective
50 service plan, shall, upon request, provide to the local
51 child protective service such assistance and information
52 as will enable it to fulfill its responsibilities.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-7. Contributing to delinquency or neglect of a child.

1 A person who by any act or omission contributes to,
2 encourages or tends to cause the delinquency or neglect
3 of any child, including, but not limited to, aiding or
4 encouraging any such child to habitually or continually
5 refuse to respond, without just cause, to the lawful
6 supervision of such child's parents, guardian or custo-

7 dian or to be habitually absent from school without just
 8 cause, shall be guilty of a misdemeanor, and, upon
 9 conviction thereof, shall be fined not less than fifty nor
 10 more than five hundred dollars, or imprisoned in the
 11 county jail for a period not exceeding one year, or both
 12 fined and imprisoned.

13 In addition to any penalty provided under this section
 14 and any restitution which may be ordered by the court
 15 under article eleven-a of chapter sixty-one, the court
 16 may order any person convicted under the provisions of
 17 this section to pay all or any portion of the cost of
 18 medical, psychological or psychiatric treatment of the
 19 child resulting from the act or acts for which the person
 20 is convicted, whether or not the child is considered to
 21 have sustained bodily injury.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article

8. Crimes Against Chastity, Morality and Decency.

8B. Sexual Offenses.

8C. Filming of Sexually Explicit Conduct of Minors.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-6. Detention of person in place of prostitution; penalty.

§61-8-7. Procuring for house of prostitution; penalty; venue; competency as witness; marriage no defense.

§61-8-8. Receiving support from prostitution; pimping; penalty; prostitute may testify.

§61-8-12. Incest; penalty.

§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

§61-8-14. Cruelty to children; penalty.

§61-8-6. Detention of person in place of prostitution; penalty.

1 Whoever shall by any means keep, hold, detain or
 2 restrain any person in a house of prostitution or other
 3 place where prostitution is practiced or allowed; or
 4 whoever shall, directly or indirectly, keep, hold, detain
 5 or restrain, or attempt to keep, hold, detain or restrain,
 6 in any house of prostitution or other place where
 7 prostitution is practiced or allowed, any person by any
 8 means, for the purpose of compelling such person,
 9 directly or indirectly, to pay, liquidate or cancel any

10 debt, dues or obligations incurred or said to have been
11 incurred by such person shall, upon conviction for the
12 first offense under this section, be punished by impri-
13 sonment in the county jail for a period of not less than
14 six months nor more than one year, and by a fine of not
15 less than one hundred nor more than five hundred
16 dollars, and, upon conviction for any subsequent offense
17 under this section, shall be punished by imprisonment
18 in the penitentiary for not less than one nor more than
19 three years: *Provided*, That in any offense under this
20 section where the person so kept, held, detained or
21 restrained is a minor, any person violating the provi-
22 sions of this section shall be guilty of a felony, and, upon
23 conviction, shall be confined in the penitentiary not less
24 than two years nor more than five years or fined not
25 more than five thousand dollars, or both.

**§61-8-7. Procuring for house of prostitution; penalty;
venue; competency as witness; marriage no
defense.**

1 Any person who shall procure an inmate for a house
2 of prostitution, or who, by promises, threats, violence, or
3 by any device or scheme, shall cause, induce, persuade
4 or encourage a person to become an inmate of a house
5 of prostitution, or shall procure a place as inmate in a
6 house of prostitution for a person; or any person who
7 shall, by promises, threats, violence, or by any device or
8 scheme cause, induce, persuade or encourage an inmate
9 of a house of prostitution to remain therein as such
10 inmate; or any person who shall, by fraud or artifice,
11 or by duress of person or goods, or by abuse of any
12 position of confidence or authority, procure any person
13 to become an inmate of a house of ill fame, or to enter
14 any place in which prostitution is encouraged or allowed
15 within this state, or to come into or leave this state for
16 the purpose of prostitution, or who shall procure any
17 person to become an inmate of a house of ill fame within
18 this state or to come into or leave this state for the
19 purpose of prostitution; or shall receive or give or agree
20 to receive or give any money or thing of value for
21 procuring or attempting to procure any person to
22 become an inmate of a house of ill fame within this state,

23 or to come into or leave this state for the purpose of
24 prostitution, shall be guilty of pandering, and, upon a
25 first conviction for an offense under this section, shall
26 be punished by imprisonment in the county jail for a
27 period of not less than six months nor more than one
28 year, and by a fine of not less than one hundred nor
29 more than five hundred dollars, and, upon conviction for
30 any subsequent offense under this section, shall be
31 punished by imprisonment in the penitentiary for a
32 period of not less than one nor more than five years:
33 *Provided*, That where the inmate referred to in this
34 section is a minor, any person violating the provisions
35 of this section shall be guilty of a felony, and, upon
36 conviction, shall be confined in the penitentiary not less
37 than two years nor more than five years or fined not
38 more than five thousand dollars, or both.

39 It shall not be a defense to prosecution for any of the
40 acts prohibited in this section that any part of such act
41 or acts shall have been committed outside of this state,
42 and the offense shall in such case be deemed and alleged
43 to have been committed and the offender tried and
44 punished in any county in which the prostitution was
45 intended to be practiced, or in which the offense was
46 consummated, or any overt act in furtherance of the
47 offense was committed.

48 Any such person shall be a competent witness in any
49 prosecution under this section to testify for or against
50 the accused as to any transaction, or as to conversation
51 with the accused, or by the accused with another person
52 or persons in his or her presence, notwithstanding his
53 or her having married the accused before or after the
54 violation of any of the provisions of this section, whether
55 called as a witness during the existence of the marriage
56 or after its dissolution. The act or state of marriage shall
57 not be a defense to any violation of this section.

**§61-8-8. Receiving support from prostitution; pimping;
penalty; prostitute may testify.**

1 Any person who, knowing another person to be a
2 prostitute, shall live or derive support or maintenance,
3 in whole or in part, from the earnings or proceeds of

4 the prostitution of such prostitute, or from money loaned
5 or advanced to or charged against such prostitution by
6 any keeper or manager or inmate of a house or other
7 place where prostitution is practiced or allowed, or shall
8 tout or receive compensation for touting for such
9 prostitution, shall be guilty of pimping, and, upon the
10 first conviction for such offense, shall be punished by
11 imprisonment in the county jail for a period of not less
12 than six months nor more than one year, and by a fine
13 of not less than one hundred nor more than five hundred
14 dollars, and, upon a conviction for any subsequent
15 offense hereunder, shall be punished by imprisonment
16 in the penitentiary for a period of not less than one nor
17 more than three years: *Provided*, That where the
18 prostitute referred to in this section is a minor, any
19 person violating the provisions of this section shall be
20 guilty of a felony, and, upon conviction, shall be confined
21 in the penitentiary not less than two years or fined not
22 more than five thousand dollars, or both. A prostitute
23 shall be a competent witness in any prosecution
24 hereunder to testify for or against the accused as to any
25 transaction or conversation with the accused, or by the
26 accused with another person or persons in the presence
27 of the prostitute, even if the prostitute may have
28 married the accused before or after the violation of any
29 of the provisions of this section, whether called as a
30 witness during the existence of the marriage or after its
31 dissolution.

§61-8-12. Incest; penalty.

- 1 (a) For the purposes of this section:
- 2 (1) "Aunt" means the sister of a person's mother or
3 father;
- 4 (2) "Brother" means the son of a person's mother or
5 father;
- 6 (3) "Daughter" means a person's natural daughter,
7 adoptive daughter or the daughter of a person's husband
8 or wife;
- 9 (4) "Father" means a person's natural father, adoptive
10 father or the husband of a person's mother;

- 11 (5) "Granddaughter" means the daughter of a person's
12 son or daughter;
- 13 (6) "Grandfather" means the father of a person's
14 father or mother;
- 15 (7) "Grandmother" means the mother of a person's
16 father or mother;
- 17 (8) "Grandson" means the son of a person's son or
18 daughter;
- 19 (9) "Mother" means a person's natural mother,
20 adoptive mother or the wife of a person's father;
- 21 (10) "Niece" means the daughter of a person's brother
22 or sister;
- 23 (11) "Nephew" means the son of a person's brother or
24 sister;
- 25 (12) "Sexual intercourse" means any act between
26 persons involving penetration, however slight, of the
27 female sex organ by the male sex organ or involving
28 contact between the sex organs of one person and the
29 mouth or anus of another person;
- 30 (13) "Sexual intrusion" means any act between
31 persons involving penetration, however slight, of the
32 female sex organ or of the anus of any person by an
33 object for the purpose of degrading or humiliating the
34 person so penetrated or for gratifying the sexual desire
35 of either party;
- 36 (14) "Sister" means the daughter of a person's father
37 or mother;
- 38 (15) "Son" means a person's natural son, adoptive son
39 or the son of a person's husband or wife;
- 40 (16) "Uncle" means the brother of a person's father or
41 mother.
- 42 (b) A person is guilty of incest when such person
43 engages in sexual intercourse or sexual intrusion with
44 his or her father, mother, brother, sister, daughter, son,
45 grandfather, grandmother, grandson, granddaughter,
46 nephew, niece, uncle or aunt.

47 (c) Any person who violates the provisions of this
48 section shall be guilty of a felony, and, upon conviction
49 thereof, shall be imprisoned in the penitentiary not less
50 than five years nor more than ten years, or fined not
51 more than five thousand dollars and imprisoned in the
52 penitentiary not less than five years nor more than ten
53 years.

54 (d) In addition to any penalty provided under this
55 section and any restitution which may be ordered by the
56 court under article eleven-a of this chapter, the court
57 may order any person convicted under the provisions of
58 this section where the victim is a minor, to pay all or
59 any portion of the cost of medical, psychological or
60 psychiatric treatment of the victim, the need for which
61 results from the act or acts for which the person is
62 convicted, whether or not the victim is considered to
63 have sustained bodily injury.

**§61-8-13. Incest; limits on interviews of children eleven
years old or less; evidence.**

1 (a) In any prosecution under the provisions of section
2 twelve of this article, the court may provide by rule for
3 reasonable limits on the number of interviews to which
4 a victim who is eleven years old or less must submit for
5 law enforcement or discovery purposes. To the extent
6 possible the rule shall protect the mental and emotional
7 health of the child from the psychological damage of
8 repeated interrogation and at the same time preserve
9 the rights of the public and the defendant.

10 (b) At any stage of the proceedings, in any prosecution
11 under this article, the court may permit a child who is
12 eleven years old or less to use anatomically correct dolls,
13 mannequins or drawings to assist such child in
14 testifying.

15 (c) In any prosecution under this article in which the
16 victim's lack of consent is based solely on the incapacity
17 to consent because such victim was below a critical age,
18 evidence of specific instances of the victim's sexual
19 conduct, opinion evidence of the victim's sexual conduct
20 and reputation evidence of the victim's sexual conduct
21 shall not be admissible. In any other prosecution under

22 this article, evidence of specific instances of the victim's
23 prior sexual conduct with the defendant shall be
24 admissible on the issue of consent: *Provided*, That such
25 evidence heard first out of the presence of the jury is
26 found by the judge to be relevant.

27 (d) In any prosecution under this article evidence of
28 specific instances of the victim's sexual conduct with
29 persons other than the defendant, opinion evidence of
30 the victim's sexual conduct and reputation evidence of
31 the victim's sexual conduct shall not be admissible:
32 *Provided*, That such evidence shall be admissible solely
33 for the purpose of impeaching credibility, if the victim
34 first makes his or her previous sexual conduct an issue
35 in the trial by introducing evidence with respect thereto.

36 (e) In any prosecution under this article, neither age
37 nor mental capacity of the victim shall preclude the
38 victim from testifying.

§61-8-24. Cruelty to children; penalty.

1 Any person who shall cruelly ill treat, abuse, or inflict
2 unnecessarily cruel punishment upon, any infant or
3 minor child, and any person, having the care, custody
4 or control of any minor child, who shall willfully
5 abandon or neglect the same, shall be guilty of a
6 misdemeanor, and, upon conviction thereof, shall be
7 fined not less than one hundred nor more than one
8 thousand dollars, and, in the discretion of the court, may
9 be imprisoned in the county jail not exceeding one year
10 for each offense.

11 In addition to any penalty provided under this section
12 and any restitution which may be ordered by the court
13 under article eleven-a of this chapter, the court may
14 order any person convicted under the provisions of this
15 section to pay all or any portion of the cost of medical,
16 psychological or psychiatric treatment of the victim, the
17 need for which results from the act or acts for which
18 the person is convicted, whether or not the victim is
19 considered to have sustained bodily injury.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definitions of terms.

§61-8B-10. Indecent exposure.

§61-8B-11. Sexual offenses; evidence.

§61-8B-13. Payment of treatment cost for victim.

§61-8B-14. Limits on interviews of children eleven years old or less.

§61-8B-1. Definition of terms.

1 In this article, unless a different meaning plainly is
2 required:

3 (1) "Forcible compulsion" means:

4 (a) Physical force that overcomes such earnest resist-
5 ance as might reasonably be expected under the
6 circumstances; or

7 (b) Threat or intimidation, expressed or implied,
8 placing a person in fear of immediate death or bodily
9 injury to himself or another person or in fear that he
10 or another person will be kidnapped; or

11 (c) Fear by a child under sixteen years of age caused
12 by intimidation, expressed or implied, by another person
13 four years older than the victim.

14 For the purposes of this definition "resistance"
15 includes physical resistance or any clear communication
16 of the victim's lack of consent.

17 (2) "Married," for the purposes of this article in
18 addition to its legal meaning, includes persons living
19 together as husband and wife regardless of the legal
20 status of their relationship.

21 (3) "Mentally defective" means that a person suffers
22 from a mental disease or defect which renders such
23 person incapable of appraising the nature of his conduct.

24 (4) "Mentally incapacitated" means that a person is
25 rendered temporarily incapable of appraising or
26 controlling his or her conduct as a result of the influence
27 of a controlled or intoxicating substance administered to
28 such person without his or her consent or as a result of
29 any other act committed upon such person without his
30 or her consent.

31 (5) "Physically helpless" means that a person is
32 unconscious or for any reason is physically unable to

33 communicate unwillingness to an act.

34 (6) "Sexual contact" means any intentional touching,
35 either directly or through clothing, of the anus or any
36 part of the sex organs of another person, or the breasts
37 of a female or intentional touching of any part of another
38 person's body by the actor's sex organs, where the victim
39 is not married to the actor and the touching is done for
40 the purpose of gratifying the sexual desire of either
41 party.

42 (7) "Sexual intercourse" means any act between
43 persons not married to each other involving penetration,
44 however slight, of the female sex organ by the male sex
45 organ or involving contact between the sex organs of one
46 person and the mouth or anus of another person.

47 (8) "Sexual intrusion" means any act between persons
48 not married to each other involving penetration,
49 however slight, of the female sex organ or of the anus
50 of any person by an object for the purpose of degrading
51 or humiliating the person so penetrated or for gratifying
52 the sexual desire of either party.

53 (9) "Bodily injury" means substantial physical pain,
54 illness or any impairment of physical condition.

55 (10) "Serious bodily injury" means bodily injury
56 which creates a substantial risk of death, which causes
57 serious or prolonged disfigurement, prolonged impair-
58 ment of health, or prolonged loss or impairment of the
59 function of any bodily organ.

60 (11) "Deadly weapon" means any instrument, device
61 or thing capable of inflicting death or serious bodily
62 injury, and designed or specially adapted for use as a
63 weapon, or possessed, carried or used as a weapon.

§61-8B-10. Indecent exposure.

1 (a) A person is guilty of indecent exposure when such
2 person intentionally exposes his or her sex organs or
3 anus or the sex organs or anus of another person, or
4 intentionally causes such exposure by another or
5 engages in any overt act of sexual gratification, and does
6 so under circumstances in which the person knows that

7 the conduct is likely to cause affront or alarm.

8 (b) Any person who violates the provisions of this
9 section shall be guilty of a misdemeanor, and, upon
10 conviction thereof, shall be confined in the county jail
11 not more than ninety days, or fined not more than two
12 hundred fifty dollars and confined in the county jail not
13 more than ninety days.

§61-8B-11. Sexual offenses; evidence.

1 (a) In any prosecution under this article in which the
2 victim's lack of consent is based solely on the incapacity
3 to consent because such victim was below a critical age,
4 evidence of specific instances of the victim's sexual
5 conduct, opinion evidence of the victim's sexual conduct
6 and reputation evidence of the victim's sexual conduct
7 shall not be admissible. In any other prosecution under
8 this article, evidence of specific instances of the victim's
9 prior sexual conduct with the defendant shall be
10 admissible on the issue of consent: *Provided*, That such
11 evidence heard first out of the presence of the jury is
12 found by the judge to be relevant.

13 (b) In any prosecution under this article evidence of
14 specific instances of the victim's sexual conduct with
15 persons other than the defendant, opinion evidence of
16 the victim's sexual conduct and reputation evidence of
17 the victim's sexual conduct shall not be admissible:
18 *Provided*, That such evidence shall be admissible solely
19 for the purpose of impeaching credibility, if the victim
20 first makes his or her previous sexual conduct an issue
21 in the trial by introducing evidence with respect thereto.

22 (c) In any prosecution under this article, neither age
23 nor mental capacity of the victim shall preclude the
24 victim from testifying.

25 (d) At any stage of the proceedings, in any prosecution
26 under this article, the court may permit a child who is
27 eleven years old or less to use anatomically correct dolls,
28 mannequins or drawings to assist such child in testify-
29 ing.

§61-8B-13. Payment of treatment cost for victim.

1 In addition to any penalty provided under this article
2 and any restitution, which may be ordered by the court
3 under article eleven-a of this chapter, the court may
4 order any person convicted under the provisions of this
5 article to pay all or any portion of the cost of medical,
6 psychological or psychiatric treatment of the victim, the
7 need for which results from the act or acts for which
8 the defendant is convicted, whether or not the victim is
9 considered to have sustained bodily injury.

§61-8B-14. Limits on interviews of children eleven years old or less.

1 In any prosecution under this article, the court may
2 provide by rule for reasonable limits on the number of
3 interviews to which a victim who is a child who is eleven
4 years old or less must submit for law enforcement or
5 discovery purposes. The rule shall to the extent possible
6 protect the mental and emotional health of the child
7 from the psychological damage of repeated interroga-
8 tions while at the same time preserve the rights of the
9 public and the defendant.

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

§61-8C-1. Definitions.

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

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

§61-8C-4. Payments of treatment costs for minor.

§61-8C-5. Limits on interviews of children eleven years old or less; evidence.

§61-8C-1. Definitions.

1 For the purposes of this article:

2 (a) "Minor" means any child under eighteen years of
3 age.

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

7 (c) "Sexually explicit conduct" includes any of the
8 following, whether actually performed or simulated:

9 (1) Genital to genital intercourse;

- 10 (2) Fellatio;
11 (3) Cunnilingus;
12 (4) Anal intercourse;
13 (5) Oral to anal intercourse;
14 (6) Bestiality;
15 (7) Masturbation;
16 (8) Sadoomasochistic abuse, including, but not limited
17 to, flagellation, torture or bondage;
18 (9) Excretory functions in a sexual context; or
19 (10) Exhibition of the genitals, pubic or rectal areas
20 of any person in a sexual context.
21 (d) "Person" means an individual, partnership, firm,
22 association, corporation or other legal entity.

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

- 1 (a) Any person who causes or knowingly permits,
2 uses, persuades, induces, entices or coerces such minor
3 to engage in or uses such minor to do or assist in any
4 sexually explicit conduct shall be guilty of a felony when
5 such person has knowledge that any such act is being
6 photographed or filmed. Upon conviction thereof, such
7 person shall be fined not more than ten thousand dollars,
8 or imprisoned in the penitentiary not more than ten
9 years, or both fined and imprisoned.
- 10 (b) Any person who photographs or films such minor
11 engaging in any sexually explicit conduct shall be guilty
12 of a felony, and, upon conviction thereof, shall be fined
13 not more than ten thousand dollars, or imprisoned in the
14 penitentiary not more than ten years, or both fined and
15 imprisoned.
- 16 (c) Any parent, legal guardian or person having
17 custody and control of a minor, who photographs or
18 films such minor in any sexually explicit conduct or
19 causes or knowingly permits, uses, persuades, induces,
20 entices or coerces such minor child to engage in or assist
21 in any sexually explicit act shall be guilty of a felony

22 when such person has knowledge that any such act may
23 be photographed or filmed. Upon conviction thereof,
24 such persons shall be fined not more than ten thousand
25 dollars, or imprisoned in the penitentiary not more than
26 ten years, or both fined and imprisoned.

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

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

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

§61-8C-4. Payments of treatment costs for minor.

1 In addition to any penalty provided under this article
2 and any restitution which may be ordered by the court
3 under article eleven-a of this chapter, the court may
4 order any person convicted under the provisions of this
5 article to pay all or any portion of the cost of medical,
6 psychological or psychiatric treatment of the minor
7 resulting from the act or acts for which the person is
8 convicted, whether or not the minor is considered to
9 have sustained bodily injury.

§61-8C-5. Limits on interviews of children eleven years old or less; evidence.

1 (a) In any prosecution under this article, the court
2 may provide by rule for reasonable limits on the number
3 of interviews to which a victim who is eleven years old
4 or less must submit for law enforcement or discovery
5 purposes. The rule shall to the extent possible protect
6 the mental and emotional health of the child from the

7 psychological damage of repeated interrogation and at
8 the same time preserve the rights of the public and the
9 defendant.

10 (b) At any stage of the proceedings, in any prosecution
11 under this article, the court may permit a child who is
12 eleven years old or less to use anatomically correct dolls,
13 mannequins or drawings to assist such child in testify-
14 ing.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

§62-12-2. Eligibility for probation.

1 (a) All persons who are found guilty of or plead guilty
2 to any felony, the maximum penalty for which is less
3 than life imprisonment, and all persons who are found
4 guilty of or plead guilty to any misdemeanor, shall be
5 eligible for probation, notwithstanding the provisions of
6 sections eighteen and nineteen, article eleven, chapter
7 sixty-one of this code.

8 (b) The provisions of subsection (a) of this section to
9 the contrary notwithstanding, any person who commits
10 or attempts to commit a felony with the use, present-
11 ment or brandishing of a firearm shall be ineligible for
12 probation. Nothing in this section shall apply to an
13 accessory before the fact or a principal in the second
14 degree who has been convicted as if he or she were a
15 principal in the first degree if, in the commission of or
16 in the attempted commission of the felony, only the
17 principal in the first degree used, presented or bran-
18 dished a firearm.

19 (c) (1) The existence of any fact which would make
20 any person ineligible for probation under subsection (b)
21 of this section because of the commission or attempted
22 commission of a felony with the use, presentment or
23 brandishing of a firearm shall not be applicable unless
24 such fact is clearly stated and included in the indictment
25 or presentment by which such person is charged and is

26 either (i) found by the court upon a plea of guilty or nolo
27 contendere, or (ii) found by the jury, if the matter be
28 tried before a jury, upon submitting to such jury a
29 special interrogatory for such purpose or (iii) found by
30 the court, if the matter be tried by the court, without
31 a jury.

32 (2) The amendments to this subsection adopted in the
33 year one thousand nine hundred eighty-one:

34 (A) Shall apply to all applicable offenses occurring on
35 or after the first day of August of that year;

36 (B) Shall apply with respect to the contents of any
37 indictment or presentment returned on or after the first
38 day of August of that year irrespective of when the
39 offense occurred;

40 (C) Shall apply with respect to the submission of a
41 special interrogatory to the jury and the finding to be
42 made thereon in any case submitted to such jury on or
43 after the first day of August of that year or to the
44 requisite findings of the court upon a plea of guilty or
45 in any case tried without a jury: *Provided*, That the state
46 shall give notice in writing of its intent to seek such
47 finding by the jury or court, as the case may be, which
48 notice shall state with particularity the grounds upon
49 which such finding shall be sought as fully as such
50 grounds are otherwise required to be stated in an
51 indictment, unless the grounds therefor are alleged in
52 the indictment or presentment upon which the matter
53 is being tried;

54 (D) Shall not apply with respect to cases not affected
55 by such amendment and in such cases the prior
56 provisions of this section shall apply and be construed
57 without reference to such amendment; and

58 Insofar as such amendments relate to mandatory
59 sentences without probation, all such matters requiring
60 such sentence shall be proved beyond a reasonable doubt
61 in all cases tried by the jury or the court.

62 (d) For the purpose of this section, the term "firearm"
63 shall mean any instrument which will, or is designed to,
64 or may readily be converted to, expel a projectile by the

65 action of an explosive, gunpowder, or any other similar
66 means.

67 (e) In the case of any person who has been found
68 guilty of, or pleaded guilty to, a felony or misdemeanor
69 under the provisions of section twelve or twenty-four,
70 article eight of chapter sixty-one, or under the provi-
71 sions of article eight-c or eight-b, both of chapter sixty-
72 one, all of this code, such person shall only be eligible
73 for probation after undergoing a physical, mental and
74 psychiatric study and diagnosis which shall include an
75 on-going treatment plan requiring active participation
76 in sexual abuse counseling at a mental health facility or
77 through some other approved program: *Provided*, That
78 nothing disclosed by the person during such study or
79 diagnosis shall be made available to any law enforce-
80 ment agency, or other party without that person's
81 consent, or admissible in any court of this state, unless
82 such information disclosed shall indicate the intention or
83 plans of the probationer to do harm to any person,
84 animal, institution, or property, in which case such
85 information may be released only to such persons as
86 might be necessary for protection of the said person,
87 animal, institution, or property.

**§62-12-13. Powers and duties of board; eligibility for
parole; procedure for granting parole.**

1 (a) The board of parole, whenever it is of the opinion
2 that the best interests of the state and of the prisoner
3 will be subserved thereby, and subject to the limitations
4 hereinafter provided, shall release any such prisoner on
5 parole for such terms and upon such conditions as are
6 provided by this article. Any prisoner of a penitentiary
7 of this state, to be eligible for parole:

8 (1)(A) Shall have served the minimum term of his or
9 her indeterminate sentence, or shall have served one
10 fourth of his or her definite term sentence, as the case
11 may be, except that in no case shall any person who
12 committed, or attempted to commit a felony with the
13 use, presentment or brandishing of a firearm, be eligible
14 for parole prior to serving a minimum of three years of
15 his or her sentence or the maximum sentence imposed

16 by the court, whichever is less: *Provided*, That any
17 person who committed, or attempted to commit, any
18 violation of section twelve, article two, chapter sixty-one
19 of this code, with the use, presentment or brandishing
20 of a firearm, shall not be eligible for parole prior to
21 serving a minimum of five years of his or her sentence
22 or one third of his or her definite term sentence,
23 whichever shall be the greater. Nothing in this section
24 shall apply to an accessory before the fact or a principal
25 in the second degree who has been convicted as if he or
26 she were a principal in the first degree if, in the
27 commission of or in the attempted commission of the
28 felony, only the principal in the first degree used,
29 presented or brandished a firearm. No person is
30 ineligible for parole under the provisions of this
31 subdivision because of the commission or attempted
32 commission of a felony with the use, presentment or
33 brandishing of a firearm unless such fact is clearly
34 stated and included in the indictment or presentment by
35 which such person was charged and was either (i) found
36 by the court at the time of trial upon a plea of guilty
37 or nolo contendere, or (ii) found by the jury, upon
38 submitting to such jury a special interrogatory for such
39 purpose if the matter was tried before a jury, or (iii)
40 found by the court, if the matter was tried by the court
41 without a jury.

42 For the purpose of this section, the term "firearm"
43 shall mean any instrument which will, or is designed to,
44 or may readily be converted to, expel a projectile by the
45 action of an explosive, gunpowder or any other similar
46 means.

47 (B) The amendments to this subsection adopted in the
48 year one thousand nine hundred eighty-one:

49 (i) Shall apply to all applicable offenses occurring on
50 or after the first day of August of that year;

51 (ii) Shall apply with respect to the contents of any
52 indictment or presentment returned on or after the first
53 day of August of that year irrespective of when the
54 offense occurred;

55 (iii) Shall apply with respect to the submission of a

56 special interrogatory to the jury and the finding to be
57 made thereon in any case submitted to such jury on or
58 after the first day of August of that year or to the
59 requisite findings of the court upon a plea of guilty or
60 in any case tried without a jury: *Provided*, That the state
61 shall give notice in writing of its intent to seek such
62 finding by the jury or court, as the case may be, which
63 notice shall state with particularity the grounds upon
64 which such finding shall be sought as fully as such
65 grounds are otherwise required to be stated in an
66 indictment, unless the grounds therefor are alleged in
67 the indictment or presentment upon which the matter
68 is being tried;

69 (iv) Shall not apply with respect to cases not affected
70 by such amendment and in such cases the prior
71 provisions of this section shall apply and be construed
72 without reference to such amendment.

73 Insofar as such amendments relate to mandatory
74 sentences restricting the eligibility for parole, all such
75 matters requiring such sentence shall be proved beyond
76 a reasonable doubt in all cases tried by the jury or the
77 court.

78 (2) Shall not be under punishment or in solitary
79 confinement for any infraction of prison rules;

80 (3) Shall have maintained a record of good conduct in
81 prison for a period of at least three months immediately
82 preceding the date of his or her release on parole;

83 (4) Shall have submitted to the board a written parole
84 release plan setting forth proposed plans for his or her
85 place of residence, employment and, if appropriate, his
86 or her plans regarding education and post-release
87 counseling and treatment, said parole release plan
88 having been approved by the commissioner of correc-
89 tions or his or her authorized representative.

90 (5) Shall have satisfied the board that if released on
91 parole he or she will not constitute a danger to the
92 community.

93 Except in the case of one serving a life sentence, no
94 person who has been previously twice convicted of a

95 felony may be released on parole until he or she has
96 served the minimum term provided by law for the crime
97 for which he or she was convicted. No person sentenced
98 for life may be paroled until he or she has served ten
99 years, and no person sentenced for life who has been
100 previously twice convicted of a felony may be paroled
101 until he or she has served fifteen years. In the case of
102 a person sentenced to any penal institution of this state,
103 it shall be the duty of the board, as soon as such person
104 becomes eligible, to consider the advisability of his or
105 her release on parole. If, upon such consideration, parole
106 be denied, the board shall at least once a year reconsider
107 and review the case of every prisoner so eligible, which
108 reconsideration and review shall be by the entire board.
109 If parole be denied, the prisoner shall be promptly
110 notified.

111 (b) In the case of any person sentenced to or confined
112 under sentence in any city or county jail in this state,
113 the board shall act only upon written application for
114 parole. If such jail prisoner is under sentence on a felony
115 conviction, the provisions hereof relating to penitentiary
116 prisoners shall apply to and control his or her release
117 on parole. If such person is serving time on a misdemea-
118 nor conviction, he or she is eligible for parole consider-
119 ation, upon receipt of his or her written parole appli-
120 cation and after time for probation release by the
121 sentencing court or judge has expired.

122 (c) The board shall, with the approval of the governor,
123 adopt rules and regulations governing the procedure in
124 the granting of parole. No provision of this article and
125 none of the rules and regulations adopted hereunder are
126 intended or shall be construed to contravene, limit or
127 otherwise interfere with or affect the authority of the
128 governor to grant pardons and reprieves, commute
129 sentences, remit fines or otherwise exercise his or her
130 constitutional powers of executive clemency.

131 The board shall be charged with the duty of super-
132 vising all probationers and parolees whose supervision
133 may have been undertaken by this state by reason of any
134 interstate compact entered into pursuant to the uniform
135 act for out of state parolee supervision.

136 (d) When considering a penitentiary prisoner for
137 release on parole, the board of parole shall have before
138 it an authentic copy of or report on the prisoner's
139 current criminal record as provided through the
140 department of public safety of West Virginia, the
141 United States department of justice or other reliable
142 criminal information sources and written reports of the
143 warden or superintendent of the penitentiary, as the
144 case may be, to which such prisoner is sentenced:

145 (1) On the prisoner's conduct record while in prison,
146 including a detailed statement showing any and all
147 infractions of prison rules by the prisoner and the
148 nature and extent of discipline and punishment admin-
149 istered therefor;

150 (2) On improvement or other changes noted in the
151 prisoner's mental and moral condition while in prison,
152 including a statement expressive of the prisoner's
153 current attitude toward society in general, toward the
154 judge who sentenced him or her, toward the prosecuting
155 attorney who prosecuted him or her, toward the
156 policeman or other officer who arrested the prisoner and
157 toward the crime for which he or she is under sentence
158 and his or her previous criminal record;

159 (3) On the prisoner's industrial record while in prison,
160 showing the nature of his or her prison work or
161 occupation and the average number of hours per day he
162 or she has been employed in prison industry and
163 recommending the nature and kinds of employment
164 which he or she is best fitted to perform and in which
165 the prisoner is most likely to succeed when he or she
166 leaves prison;

167 (4) On physical, mental and psychiatric examinations
168 of the prisoner conducted, insofar as practicable, within
169 the two months next preceding parole consideration by
170 the board.

171 The board may waive the requirement of any such
172 report when not available or not applicable as to any
173 prisoner considered for parole but, in every such case,
174 shall enter in the record thereof its reason for such
175 waiver: *Provided*, That in the case of a prisoner who is

176 incarcerated because such prisoner has been found
177 guilty of, or has pleaded guilty to a felony under the
178 provisions of section twelve, article eight, chapter sixty-
179 one of this code or under the provisions of article eight-
180 b or eight-c of chapter sixty-one, the board may not
181 waive the report required by this subsection and the
182 report shall include a study and diagnosis which shall
183 include an on-going treatment plan requiring active
184 participation in sexual abuse counseling at an approved
185 mental health facility or through some other approved
186 program: *Provided, however,* That nothing disclosed by
187 the person during such study or diagnosis shall be made
188 available to any law enforcement agency, or other party
189 without that person's consent, or admissible in any court
190 of this state, unless such information disclosed shall
191 indicate the intention or plans of the parolee to do harm
192 to any person, animal, institution, or to property.
193 Progress reports of outpatient treatment shall be made
194 at least every six months to the parole officer supervising
195 such person. In addition, in such cases, the parole
196 board shall inform the prosecuting attorney of the
197 county in which the person was convicted of the parole
198 hearing and shall request that the prosecuting attorney
199 inform the parole board of the circumstances surrounding
200 a conviction or plea of guilty, plea bargaining and
201 other background information that might be useful in
202 its deliberations. The board shall also notify the victim,
203 or the parents or guardian of the victim if the victim
204 is still a minor, of the person being considered for parole
205 in such a case.

206 Before releasing any penitentiary prisoner on parole,
207 the board of parole shall arrange for the prisoner to
208 appear in person before the board and the board may
209 examine and interrogate him or her on any matters
210 pertaining to his or her parole, including reports before
211 the board made pursuant to the provisions hereof. The
212 board shall reach its own written conclusions as to the
213 desirability of releasing such prisoner on parole. The
214 warden or superintendent shall furnish all necessary
215 assistance and cooperate to the fullest extent with the
216 board of parole. All information, records and reports
217 received by the board shall be kept on permanent file.

218 The board and its designated agents shall at all times
219 have access to inmates imprisoned in any penal or
220 correctional institutions of this state or in any city or
221 county jail in this state, and shall have the power to
222 obtain any information or aid necessary to the perfor-
223 mance of their duties from other departments and
224 agencies of the state or from any political subdivision
225 thereof.

226 The board shall, if so requested by the governor,
227 investigate and consider all applications for pardon,
228 reprieve or commutation and shall make recommenda-
229 tion thereon to the governor.

230 Prior to making such recommendation and prior to
231 releasing any penitentiary person on parole, the board
232 shall notify the sentencing judge and prosecuting
233 attorney at least ten days before such recommendation
234 or parole.

CHAPTER 12

(H. B. 144—By Delegate Bailey)

[Passed May 20, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four and five, article twenty-two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to higher education and certain faculty salaries; providing for a six hundred dollar across-the-board salary increase; changing the years of experience in certain academic ranks; deleting the provision for percentage increase for years of experience above the salary schedule; providing for increasing the minimum salary for each academic rank at each year of experience; providing for the salary of full-time faculty hired after the effective date specified; and providing a method for rectifying inequities and accommodating competitive market conditions with funds distributed equitably to all state institutions of higher education in accordance with board policy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18-22-2. Higher education minimum salary schedule.

§18-22-3. Assignment to salary schedule; actual salary.

§18-22-4. Hirings after July 1, 1986.

§18-22-5. Merit increases and salary adjustment.

§18-22-2. Higher education minimum salary schedule.

1 There is hereby established a state minimum salary
2 schedule for full-time faculty employed by the board of
3 regents consisting of a minimum salary for each
4 academic rank in accordance with years of experience:
5 *Provided*, That it is the intention of the Legislature to
6 create a schedule of minimum salary goals in higher
7 education subject to the availability of funds; and with
8 the exception of the placement of all full-time faculty
9 members included under the provisions of this article on
10 the schedule at zero years of experience, nothing in this
11 article shall be construed to guarantee payment to any
12 faculty member of the salary indicated on the approp-
13 riate schedule at the actual years of experience.

**MINIMUM SALARY SCHEDULE
FOR FULL-TIME FACULTY AT
BACCALAUREATE AND TWO-YEAR INSTITUTIONS**

14	Years of	Assistant	Associate	
15	Experience	Instructor	Professor	Professor
16	0	14,719	18,042	20,416 24,310
17	1	15,087	18,493	20,926 24,918
18	2	15,464	18,955	21,449 25,541
19	3	15,851	19,429	21,985 26,180
20	4	16,247	19,915	22,535 26,835
21	5	16,653	20,413	23,098 27,506
22	6	17,069	20,923	23,675 28,194
23	7	17,496	21,446	24,267 28,899
24	8	17,933	21,982	24,874 29,621
25	9	18,381	22,532	25,496 30,362

26	10	18,841	23,095	26,133	31,121
27	11		23,672	26,786	31,899
28	12		24,264	27,456	32,696
29	13		24,871	28,142	33,513
30	14		25,493	28,846	34,351
31	15		26,130	29,567	35,210
32	16			30,306	36,090
33	17			31,064	36,992
34	18			31,841	37,917
35	19			32,637	38,865
36	20			33,453	39,837

MINIMUM SALARY SCHEDULE FOR FULL-TIME
FACULTY AT MASTER'S INSTITUTIONS
(MARSHALL UNIVERSITY, WEST VIRGINIA
SCHOOL OF OSTEOPATHIC MEDICINE
AND THE WEST VIRGINIA COLLEGE
OF GRADUATE STUDIES)

37	Years of		Assistant	Associate	
38	Experience	Instructor	Professor	Professor	Professor
39	0	14,719	18,517	23,815	26,203
40	1	15,087	18,980	24,410	26,858
41	2	15,464	19,455	25,020	27,529
42	3	15,851	19,941	25,646	28,217
43	4	16,247	20,440	26,287	28,922
44	5	16,653	20,951	26,944	29,645
45	6	17,069	21,475	27,618	30,386
46	7	17,496	22,012	28,308	31,146
47	8	17,933	22,562	29,016	31,925
48	9	18,381	23,126	29,741	32,723
49	10	18,841	23,704	30,485	33,541
50	11		24,297	31,247	34,380
51	12		24,904	32,028	35,240
52	13		25,527	32,829	36,121
53	14		26,165	33,650	37,024
54	15		26,819	34,491	37,950
55	16			35,353	38,899
56	17			36,237	39,871
57	18			37,143	40,868
58	19			38,072	41,890
59	20			39,024	42,937

MINIMUM SALARY SCHEDULE FOR
FULL-TIME FACULTY AT
DOCTORAL INSTITUTIONS
(WEST VIRGINIA UNIVERSITY)

60	Years of		Assistant	Associate	
61	Experience	Instructor	Professor	Professor	Professor
62	0	17,092	19,466	25,458	28,285
63	1	17,519	19,953	26,094	28,992
64	2	17,957	20,452	26,746	29,717
65	3	18,406	20,963	27,415	30,460
66	4	18,866	21,487	28,100	31,222
67	5	19,338	22,024	28,803	32,003
68	6	19,821	22,575	29,523	32,803
69	7	20,317	23,139	30,261	33,623
70	8	20,825	23,717	31,018	34,464
71	9	21,346	24,310	31,793	35,326
72	10	21,880	24,918	32,588	36,209
73	11		25,541	33,403	37,114
74	12		26,180	34,238	38,042
75	13		26,835	35,094	38,993
76	14		27,506	35,971	39,968
77	15		28,194	36,870	40,967
78	16			37,792	41,991
79	17			38,737	43,041
80	18			39,705	44,117
81	19			40,698	45,220
82	20			41,715	46,351

§18-22-3. Assignment to salary schedule; actual salary.

1 (a) Upon the effective date of this article, each faculty
2 member then employed shall be given notice of the
3 placement on the minimum salary schedule which is
4 appropriate to such faculty member's years of expe-
5 rience and to which such individual has been assigned,
6 notwithstanding the actual salary paid under the
7 provisions of this article.

8 (b) Each full-time faculty member employed as of the
9 effective date of this section shall receive, for full-time
10 employment at the same academic rank during the
11 academic year one thousand nine hundred eighty-six—
12 eighty-seven and thereafter, a salary which is six
13 hundred dollars greater than the salary being paid such

14 faculty member for the academic year one thousand
15 nine hundred eighty-five—eighty-six.

16 (c) Each full-time faculty member, whose salary
17 under subsection (b) is less than the salary for zero years
18 of experience for the appropriate academic rank as set
19 forth in section two of this article, shall receive
20 additional amounts so that salary is at least the amount
21 prescribed for the appropriate academic rank at zero
22 years of experience.

23 (d) Funds remaining after increasing the salary of
24 each full-time faculty member in accordance with
25 subsection (c) of this section shall be used to pay that
26 amount that is the difference between the salary as
27 prescribed in subsection (b) of this section and the
28 appropriate salary for each full-time faculty member's
29 appropriate placement on the schedule: *Provided*, That
30 such amount may be reduced proportionately based
31 upon the amount of funds available for such purpose.

32 (e) The salary of any full-time faculty member shall
33 not be reduced by the provisions of this article.

34 (f) Upon promotion in rank, placement on the min-
35 imum salary schedule will be such as to provide a salary
36 increase of at least ten percent, and shall be at least the
37 amount prescribed for the appropriate academic rank
38 to which promoted at zero years of experience.

§18-22-4. Hirings after July 1, 1986.

1 Any person hired as a full-time faculty member after
2 the effective date of this section shall be assigned a
3 placement on the minimum salary schedule which is
4 appropriate to such person's academic rank and years
5 of experience, and such person shall have a salary of at
6 least zero years of experience at the appropriate
7 academic rank, and such proportionate increases as are
8 or may be made from funds available for such purpose
9 in accordance with the provisions of this article.

§18-22-5. Merit increases and salary adjustment.

1 Nothing in this article shall be construed to prohibit
2 merit increases or salary adjustments that rectify

3 inequities or accommodate competitive market condi-
4 tions in specific areas of specialty, including inequities
5 within the rank of full professors at doctoral and
6 master's level institutions: *Provided*, That funds for such
7 increases and/or adjustments shall be distributed in
8 accordance with board policy and shall be available to
9 all state institutions of higher education on an equitable
10 basis.

CHAPTER 13

(H. B. 145—By Delegate Bailey and Delegate Murphy)

[Passed May 22, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a; and to amend and reenact section nine, article twenty-six, chapter eighteen of said code, all relating to authorizing institutions of higher education to transfer moneys between items of allocation or appropriation and within their general revenue account, with limitations thereon; expiration of authority to authorize transfers; and providing that the majority of the board of advisors of a state institution may grant such authorization upon request of its president, with notification of any authorization to be furnished the board of regents and be fully effected before any such transfer of moneys.

Be it enacted by the Legislature of West Virginia:

That article two, chapter five-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 nineteen-a; and that section nine, article twenty-six, chapter eighteen of said code be amended and reenacted, all to read as follows:

**CHAPTER 5A. DEPARTMENT OF FINANCE
AND ADMINISTRATION.**

Chapter**5A. Department of Finance and Administration.****18. Education.****ARTICLE 2. BUDGET DIVISION.**

§5A-2-19a. Authorizing transfers between items of allocation or appropriation within general revenue accounts of state institutions of higher education; expiration of authority to authorize transfers.

1 Notwithstanding the provisions of section nineteen of
2 this article and if authorized by a majority of the board
3 of advisors of the institution of higher education, the
4 president of such institution may transfer moneys
5 within the general revenue account or accounts and
6 between items of allocation or appropriation therein or
7 subaccounts thereof: *Provided*, That no such transfer
8 may increase the moneys allocated or appropriated to
9 any personal services item or subaccount of a general
10 revenue account of such institution. A request for such
11 transfer of moneys, when desired, shall be made in
12 writing by the president of the institution and shall be
13 submitted to each member of the board of advisors for
14 such institution. Whenever such request is approved, the
15 board of regents shall be notified of such authorization,
16 and the transfer shall have been effected prior to any
17 expenditure of the moneys so transferred. Not more
18 than five percent of the total allocation or appropriation
19 in any general revenue account of an institution may be
20 transferred within such account and between the items
21 of allocation subaccounts thereof or within such account
22 and between the items of appropriation thereof. The
23 authority herein granted shall expire on the thirty-first
24 day of December, one thousand nine hundred eighty-
25 seven.

CHAPTER 18. EDUCATION.**ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

§18-26-9. Institutional boards of advisors.

1 (a) After the thirtieth day of June, one thousand nine
2 hundred eighty-one, there shall be established at each

3 state college and university, hereinafter referred to as
4 the "institution," excluding centers and branches
5 thereof, an institutional board of advisors. The board of
6 advisors shall replace any advisory board in existence
7 under the previous provisions of this section, except that
8 any such advisory board may continue until the thirtieth
9 day of June, one thousand nine hundred eighty-one. The
10 board of advisors shall consist of eleven members,
11 including an administrative officer of the institution
12 appointed by the president of the institution; a full-time
13 member of the faculty with the rank of instructor or
14 above duly elected by the faculty; a member of the
15 student body in good academic standing, enrolled for
16 college credit work and duly elected by the student
17 body; a member of the institutional classified staff duly
18 elected by the classified staff; and, appointed by the
19 board of regents, seven lay citizens of the state who have
20 demonstrated a sincere interest in and concern for the
21 welfare of the institution and who are representative of
22 its population and occupations, including at least two
23 alumni of the institution. Of the seven lay citizen
24 members, no more than four may be of the same
25 political party. The administrative officer, faculty
26 member, student member and classified staff member
27 shall serve for a term of one year and the seven lay
28 citizen members shall serve terms of four years each,
29 except that the initial appointments shall be for terms
30 of one, two, three and four years. All members shall be
31 eligible to succeed themselves for no more than one
32 additional term. A vacancy in an unexpired term of a
33 member shall be filled within sixty days of the occur-
34 rence thereof in the same manner as the original
35 appointment or election. All initial terms shall begin on
36 the first day of July, one thousand nine hundred eighty-
37 one. Except in the case of a vacancy, all elections shall
38 be held and all appointments shall be made no later than
39 the thirtieth day of April preceding the commencement
40 of the term.

41 (b) The board of advisors shall hold a regular meeting
42 at least quarterly, commencing in July of each year.
43 Additional meetings may be held upon the call of the
44 chairman, president of the institution, or upon the

45 request of at least four members. One of the seven lay
46 citizen members shall be elected as chairman by the
47 board of advisors in July of each year: *Provided*, That
48 a lay citizen member may not serve as chairman for
49 more than two consecutive years at a time. A majority
50 of the members shall constitute a quorum for conducting
51 the business of the board of advisors. The president of
52 the institution shall make available resources of the
53 institution for conducting the business of the board of
54 advisors. The members of the board of advisors shall be
55 reimbursed for all reasonable and necessary expenses
56 actually incurred in the performance of their duties
57 under this section upon presentation of an itemized
58 sworn statement thereof. All expenses incurred by the
59 board of advisors and the institution under this article
60 shall be paid from funds allocated to the institution for
61 such purpose.

62 (c) The board of advisors shall review, prior to their
63 submission by the president to the board of regents, all
64 proposals of the institution in the areas of mission,
65 academic programs, budget, capital facilities and such
66 other matters as requested by the president of the
67 institution or the board of regents or otherwise assigned
68 to it by law. The board of advisors shall comment on
69 each such proposal in writing, with such recommenda-
70 tions for concurrence therein or revision or rejection
71 thereof as it deems proper. Such written comments and
72 recommendations shall accompany the proposal to the
73 board of regents, and the board of regents shall include
74 such comments and recommendations in its considera-
75 tion of and action on the proposal. The board of regents
76 shall promptly acknowledge receipt of the comments
77 and recommendations and shall notify the board of
78 advisors in writing of any action taken thereon.

79 (d) Upon request therefor in writing by the president
80 of the institution, the board of advisors may authorize
81 transfers between items of allocation or appropriation in
82 accordance with the provisions of section nineteen-a,
83 article two, chapter five-a of this code.

84 (e) The board of advisors shall review, prior to their
85 implementation by the president, all proposals regard-

86 ing institution-wide personnel policies. The board of
87 advisors may comment on such proposals in writing.

88 (f) Upon the occurrence of a vacancy in the office of
89 president of the institution, the board of advisors shall
90 serve as a search and screening committee for candi-
91 dates to fill the vacancy under guidelines established by
92 the board of regents. When serving as a search and
93 screening committee, the board of advisors and the
94 board of regents are each authorized to appoint up to
95 three additional persons to serve on the committee as
96 long as the search and screening process is in effect. The
97 three additional appointees of the board of advisors shall
98 be faculty members of the institution. Only for the
99 purposes of the search and screening process, such
100 additional members shall possess the same powers and
101 rights as the regular members of the board of advisors,
102 including reimbursement for all reasonable and neces-
103 sary expenses actually incurred. Following the search
104 and screening process, the committee shall submit the
105 names of at least three candidates to the board of
106 regents for consideration and appointment. If the board
107 of regents rejects all candidates so submitted, the
108 committee shall submit the names of at least three
109 additional candidates, and this process shall be repeated
110 until the board of regents appoints one of the candidates
111 so submitted. The board of regents shall provide all
112 necessary staff assistance to the board of advisors in its
113 role as a search and screening committee.

CHAPTER 14

(H. B. 146—By Delegate Sattes and Delegate Phillips)

[Passed May 22, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen-b, twenty-two and thirty-nine, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article five by adding thereto a new section, designated section

fifteen-c; to amend and reenact sections three and four, article eight of said chapter; to amend and reenact section thirteen, article nine-a of said chapter; to further amend said article nine-a by adding thereto a new section, designated section six-a; to amend and reenact section three, article three, chapter eighteen-a of said code; to amend and reenact sections two, three, four, eight-a and ten, article four of said chapter; and to further amend said article four by adding thereto a new section, designated section seventeen, all relating to education, public school support and the rights, duties and compensation of certain school personnel; providing for the establishment by county boards of education of programs for the prevention of child abuse and neglect and child assault; providing for the regulation and funding thereof; requiring county boards to request certain criminal conviction records of future employees; providing for the employment of temporary teachers for adult education classes and programs; limiting the rights and benefits accruing to such temporary teachers; providing minimum ratios for the employment of school nurses or the contracting of equivalent department of health services for certain grade levels; providing for reduced tuition for summer school; providing for minimum pay for teachers of certain summer school courses; providing guidelines for the mandatory employment of county school attendance directors; providing for the duties of such directors; reducing the foundation allowance for fixed charges for the fiscal year beginning on the first day of July, one thousand nine hundred eighty-six, only; continuing the allowance for loss reduction for one year at one third the current amount; providing for permanent certification of teachers after two renewals; increasing the state minimum salary for teachers, principals and assistant principals, and school service personnel; providing for advanced salary classification for certain teachers with vocational certificates; providing for service personnel pay during any week which contains a school holiday; authorizing county boards to establish personal leave banks in accordance with the section and regulations of the state board; and providing minimum salaries and certain

benefits for department of education employees at certain state institutions.

Be it enacted by the Legislature of West Virginia:

That sections nineteen-b, twenty-two and thirty-nine, article five, chapter eighteen 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 fifteen-c; that sections three and four, article eight of said chapter be amended and reenacted; that section thirteen, article nine-a of said chapter be amended and reenacted; that said article nine-a be further amended by adding thereto a new section, designated section six-a; that section three, article three, chapter eighteen-a of said code be amended and reenacted; that sections two, three, four, eight-a and ten, article four of said chapter eighteen-a be amended and reenacted; and that article four of said chapter be amended by adding thereto a new section, designated section seventeen, all to read as follows:

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

5. County Board of Education.

8. Compulsory School Attendance.

9A. Public School Support.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

§18-5-19b. Adult education classes and programs; tuition; authority of county boards to contract with federal agencies.

§18-5-22. Medical and dental inspection; school nurses.

§18-5-39. Establishment of summer school programs; tuition.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

- 1 (a) In recognition of the findings of the Legislature as
- 2 set forth in section one, article six-c, chapter forty-nine

3 of this code, the Legislature further finds that public
4 schools are able to provide a special environment for the
5 training of children, parents and school personnel in the
6 prevention of child abuse and neglect and child assault
7 and that child abuse and neglect prevention and child
8 assault prevention programs in the public schools are an
9 effective and cost-efficient method of reducing the
10 incidents of child abuse and neglect, promoting a
11 healthy family environment and reducing the general
12 vulnerability of children.

13 (b) County boards of education shall be required, to
14 the extent funds are provided, to establish programs for
15 the prevention of child abuse and neglect and child
16 assault. Such programs shall be provided to pupils,
17 parents and school personnel as deemed appropriate.
18 Such programs shall be in compliance with regulations
19 to be developed by the state board of education with the
20 advice and assistance of the state department of human
21 services and the department of public safety: *Provided,*
22 That any such programs which substantially comply
23 with the regulations adopted by the board and were in
24 effect prior to the adoption of the regulations may be
25 continued.

26 (c) Funds for implementing the child abuse and
27 neglect prevention and child assault prevention pro-
28 grams may be allocated to the county boards of
29 education from the children's trust fund established
30 pursuant to the provisions of article six-c, chapter forty-
31 nine of this code or appropriated for such purpose by
32 the Legislature.

33 (d) County boards of education shall request from the
34 state criminal identification bureau the record of any
35 and all criminal convictions relating to child abuse, sex-
36 related offenses or possession of controlled substances
37 with intent to deliver same for all of its future em-
38 ployees. This request shall be made immediately after
39 the effective date of this section, and thereafter as
40 warranted.

**§18-5-19b. Adult education classes and programs; tuition;
authority of county boards to contract with
federal agencies.**

1 The board of education of any county shall have
2 authority to provide classes and programs for adult
3 education and to charge tuition for members of such
4 classes and/or programs, such tuitions not to exceed in
5 any case the actual cost of operation of such classes
6 and/or programs. The county board of education shall
7 also have authority to enter into contracts of agreement
8 with authorized agencies of the federal government for
9 the education of adults and to provide, assemble and
10 house materials and equipment for efficient instruction
11 in any and all such classes and/or programs, contract
12 for instruction for the term of the class and/or program
13 to be offered, and to use school facilities by way of
14 buildings and equipment under the control of said
15 board. Any funds accruing from such tuitions shall be
16 credited to adult education in the current expense fund
17 of the county board of education and reported each year
18 as of June thirtieth in the manner required for other
19 financial reports of the board.

20 The board of education of any county shall have
21 authority to enter into contracts of agreement with
22 temporary teachers for the purpose of teaching adult
23 education classes or programs which do not exceed
24 ninety days or seven hundred twenty hours. The
25 appointment of a temporary teacher is a contract of
26 agreement for the duration of the class or program and
27 the temporary teacher shall not accrue benefits of
28 retirement, personal leave, medical or life insurance,
29 seniority rights, or any other provisions relating to
30 salaries, wages and benefits pursuant to article four,
31 chapter eighteen-a of this code: *Provided*, That such
32 temporary appointment does not preclude the benefits
33 mandated by federal law, workers' compensation and
34 liability insurance coverage for the duration of the class
35 or program.

§18-5-22. Medical and dental inspection; school nurses.

1 County boards of education shall provide proper
2 medical and dental inspections for all pupils attending
3 the schools of their county and shall further have the
4 authority to take any other action necessary to protect
5 the pupils from infectious diseases, including the

6 authority to require from all school personnel employed
7 in their county, certificates of good health and of
8 physical fitness.

9 For the school year one thousand nine hundred eighty-
10 six—eighty-seven, each county board of education shall
11 employ full-time at least one school nurse for every one
12 thousand eight hundred kindergarten through seventh
13 grade pupils in net enrollment or major fraction thereof.
14 For the school year one thousand nine hundred eighty-
15 seven—eighty-eight, and each school year thereafter,
16 each county board of education shall employ full-time at
17 least one school nurse for every one thousand five
18 hundred kindergarten through seventh grade pupils in
19 net enrollment or major fraction thereof: *Provided*, That
20 each county shall employ full-time at least one school
21 nurse: *Provided, however*, That a county board may
22 contract with a public health department for services
23 deemed equivalent to those required by this section in
24 accordance with a plan to be approved by the state
25 board: *Provided further*, That the state board shall
26 promulgate rules and regulations requiring the employ-
27 ment of school nurses in excess of the number required
28 by this section to ensure adequate provision of services
29 to severely handicapped pupils.

30 Any person employed as a school nurse shall be a
31 registered professional nurse properly licensed by the
32 West Virginia board of examiners for registered
33 professional nurses in accordance with article seven,
34 chapter thirty of this code.

**§18-5-39. Establishment of summer school programs;
tuition.**

1 Inasmuch as the present county school facilities for
2 the most part lie dormant and unused during the
3 summer months, and inasmuch as there are many
4 students who are in need of remedial instruction and
5 others who desire accelerated instruction, it is the
6 purpose of this section to provide for the establishment
7 of a summer school program, which program is to be
8 separate and apart from the full school term as
9 established by each county.

10 The board of education of any county shall have
11 authority to establish a summer school program utiliz-
12 ing the public school facilities and to charge tuition for
13 students who attend such summer school, such tuition
14 not to exceed in any case the actual cost of operation of
15 such summer school program: *Provided*, That any
16 deserving pupil whose parents, in the judgment of the
17 board, are unable to pay such tuition, may attend at a
18 reduced charge or without charge. The county board of
19 education shall have the authority to determine the term
20 and curriculum of such summer schools based upon the
21 particular needs of the individual county. The curricu-
22 lum may include, but is not limited to, remedial
23 instruction, accelerated instruction, and the teaching of
24 manual arts. The term of such summer school program
25 may not be established in such a manner as to interfere
26 with the regular school term.

27 The county boards of education may employ as
28 teachers for this summer school program any certified
29 teacher. Certified teachers employed by the county
30 board of education to teach in the summer school
31 program shall be paid an amount to be determined by
32 the board and shall enter into a contract of employment
33 in such form as is prescribed by the county board of
34 education: *Provided*, That teachers who teach summer
35 courses of instruction which are offered for credit and
36 which are taught during the regular school year shall
37 be paid at the same daily rate such teacher would
38 receive if paid in accordance with the then current
39 minimum monthly salary in effect for teachers in that
40 county.

41 Any funds accruing from such tuitions shall be
42 credited to and expended within the existing framework
43 of the general current expense fund of the county board
44 of education.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

- §18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.
- §18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

§18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

1 The county board of education of every county, not
2 later than the first day of August of each year, shall
3 employ the equivalent of a full-time county director of
4 school attendance if such county has a net enrollment
5 of more than four thousand pupils, at least a half-time
6 director of school attendance if such county has a net
7 enrollment of less than four thousand pupils and such
8 assistant attendance directors as deemed necessary.
9 Such persons shall have the written recommendation of
10 the county superintendent.

11 The county board of education may set up such special
12 and professional qualifications for attendance directors
13 and assistants as are deemed expedient and proper and
14 are consistent with regulations of the state board of
15 education relating thereto.

16 The attendance director or assistant director shall be
17 paid a monthly salary as fixed by the county board.
18 Before receiving such monthly salary, the attendance
19 director or assistant director shall file with the county
20 superintendent a certified statement showing the
21 activities in school attendance service for the month and
22 the number of days actually spent in the performance
23 of such duties.

24 The county board of education shall reimburse such
25 employees for their necessary traveling expenses upon
26 presentation of a monthly, itemized, sworn statement
27 approved by the county superintendent.

28 The power of removal of the county attendance
29 director or an assistant attendance director shall rest
30 with the county board of education: *Provided*, That
31 reasons for contemplated dismissal shall be reduced to
32 writing, a copy of which shall be furnished the director
33 in question with opportunity to be heard in his own
34 behalf by the county board of education. The decision
35 of the county board of education shall be final.

§18-8-4. Duties of attendance director and assistant

directors; complaints, warrants and hearings.

1 The county attendance director and the assistants
2 shall diligently promote regular school attendance. They
3 shall ascertain reasons for inexcusable absences from
4 school of pupils of compulsory school age as defined
5 under this article, and shall take such steps as are, in
6 their discretion, best calculated to correct attitudes of
7 parents and pupils which result in absences from school
8 even though not clearly in violation of law.

9 If it is found that absence from school is in violation
10 of law, the attendance director or assistant, in the case
11 of first offense that school year, shall serve written
12 notice to the parent, guardian or custodian of such child
13 that the attendance of such child at school is required
14 and that within ten days of receipt of such notice the
15 parent, guardian or custodian, accompanied by the child
16 if possible, shall report in person to the school the child
17 attends for a conference with the principal or other
18 designated representative of the school in order to
19 discuss and correct the circumstances causing the
20 inexcusable absences of the child; and if the parent,
21 guardian or custodian does not comply with the provi-
22 sions of this article, then the attendance director or
23 assistant shall make complaint against such parent,
24 guardian or custodian before a magistrate of the county:
25 *Provided*, That for a subsequent offense in any school
26 year no such notice shall be required. If it appears from
27 the complaint that there is probable cause to believe that
28 an offense has been committed and that the accused has
29 committed it, a warrant for the arrest of the accused
30 shall issue to any officer authorized by law to arrest
31 persons charged with offenses against the state. More
32 than one warrant may be issued on the same complaint.
33 The warrant shall be executed within ten days of its
34 issuance or as soon thereafter as the accused can be
35 found.

36 The magistrate court clerk, or the clerk of the circuit
37 court performing the duties of the magistrate court
38 clerk as authorized in section eight, article one, chapter
39 fifty of this code, shall assign the case to a magistrate

40 within ten days of execution of the warrant. The hearing
41 shall be held within twenty days of the assignment to
42 the magistrate, subject to lawful continuance. The
43 magistrate shall provide to the accused at least ten days'
44 advance notice of the date, time and place of the
45 hearing.

46 When any doubt exists as to the age of a child absent
47 from school, the attendance director shall have authority
48 to require a properly attested birth certificate or an
49 affidavit from the parent, guardian or custodian of such
50 child, stating age of such child. The county attendance
51 director or assistant shall, in the performance of his
52 duties, have authority to take without warrant any child
53 absent from school in violation of the provisions of this
54 article and to place such child in the school in which
55 such child is or should be enrolled.

56 The county attendance director shall devote such time
57 as is required by section three of this article to the duties
58 of attendance director in accordance with this section
59 during the instructional term and at such other times
60 as the duties of an attendance director are required. All
61 attendance directors hired for more than two hundred
62 days may be assigned other duties determined by the
63 superintendent during the period in excess of two
64 hundred days. The county attendance director shall be
65 responsible under direction of the county superintendent
66 for the efficient administration of school attendance in
67 the county. In addition to those duties directly relating
68 to the administration of attendance, the county attend-
69 ance director and assistant directors shall also perform
70 the following duties:

71 (a) Assist in directing the taking of the school census
72 to see that it is taken at the time and in the manner
73 provided by law;

74 (b) Advise with principals and teachers on the
75 comparison of school census and enrollment for the
76 detection of possible nonenrollees;

77 (c) Cooperate with existing state and federal agencies
78 charged with enforcement of child labor laws;

79 (d) Prepare a report for submission by the county
80 superintendent to the state superintendent of schools on
81 school attendance, at such times and in such detail as
82 may be required; also, file with the county superintend-
83 ent and county board of education at the close of each
84 month a report showing activities of the school attend-
85 ance office and the status of attendance in the county
86 at the time;

87 (e) Promote attendance in the county by the compila-
88 tion of data for schools and by furnishing suggestions
89 and recommendations for publication through school
90 bulletins and the press, or in such manner as the county
91 superintendent may direct;

92 (f) Participate in school teachers' conferences with
93 parents and students;

94 (g) Assist in such other ways as the county superin-
95 tendent may direct for improving school attendance.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-6a. Foundation allowance for fixed charges for 1986-87.

§18-9A-13. Allowance for loss reduction.

§18-9A-6a. Foundation allowance for fixed charges for 1986-87.

1 For the fiscal year beginning on the first day of July,
2 one thousand nine hundred eighty-six, only, the multip-
3 lier for the portion of the foundation allowance for fixed
4 charges for professional educators and for other
5 personnel pursuant to subsection two, section six of this
6 article shall be three percent.

§18-9A-13. Allowance for loss reduction.

1 For the fiscal year beginning on the first day of July,
2 one thousand nine hundred eighty-one and for the next
3 four fiscal years, there shall be an allowance for loss
4 reduction which shall be distributed as provided in this
5 section.

6 In order to determine which counties are entitled to
7 such allowance, and the amount of such allowance, the
8 state board shall first compute the amount to be
9 received by each county from the regular state aid

10 appropriation for the fiscal year beginning on the first
11 day of July, one thousand nine hundred eighty-one,
12 allocated as provided in section twelve of this article.
13 The state board shall then compare such amount with
14 the state aid which each such county would have
15 received from the plan in effect during the fiscal year
16 one thousand nine hundred eighty-one. The state board
17 shall then compute the amount of each county's salary
18 increase for professional educators and for service
19 personnel to which it adds an amount for fixed charges
20 computed as provided in section six of this article and
21 the increase allowed for bus fleet replacement. The state
22 board shall then determine which counties' salary
23 increase plus allocated fixed charges and increase
24 allowed for bus fleet replacement exceeds the difference
25 in state aid from the cited years and the amount of this
26 excess found shall be allocated to the affected counties
27 from funds appropriated for this purpose for the fiscal
28 years beginning the first day of July, one thousand nine
29 hundred eighty-one, eighty-two, eighty-three, eighty-
30 four and eighty-five.

31 For the fiscal year beginning the first day of July, one
32 thousand nine hundred eighty-six only, an amount equal
33 to one third of the amount received pursuant to this
34 section for the fiscal year beginning the first day of July,
35 one thousand nine hundred eighty-five, shall be distrib-
36 uted to those counties receiving such allowance for loss
37 reduction.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

3. Training, Certification, Licensing.
4. Salaries, Wages, and Other Benefits.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING.

§18A-3-3. **Renewal of certificates; permanent certification.**

1 Until the person qualifies for a permanent certificate,
2 any professional or first class certificate based upon a
3 bachelor's degree shall be renewable provided the
4 holder: (1) Files application on a prescribed form with
5 the state department of education; (2) presents an

6 official transcript of six semester hours of approved
7 credit, as may be prescribed by the state board:
8 *Provided*, That such renewal is completed after the
9 beginning of the period of validity of the certificate to
10 be renewed and within the five-year period immediately
11 preceding the date of application for renewal; and (3)
12 submits a recommendation based on successful teaching
13 experience from the county superintendent of schools of
14 the county in which he last taught or resides.

15 The holder of a professional certificate, valid for five
16 years, shall have his certificate made permanent upon
17 meeting either of the following requirements: (1)
18 Completion of the second renewal, in accordance with
19 the provisions set forth in (2) above; (2) after five years
20 of service in the public schools, presentation of a
21 transcript showing the completion of requirements for
22 a master's degree from an institution of higher educa-
23 tion accredited to offer the master's degree and in a
24 program relevant to the public school program or
25 completes the fifth year of training leading to a
26 bachelor's degree in library science from a school fully
27 approved by the American library association. In either
28 event the person must file application on a prescribed
29 form with the state department of education and must
30 submit a recommendation from the county superintend-
31 ent of schools of the county in which he last taught or
32 resides.

33 All certificates and permits, other than the profes-
34 sional certificate, shall be renewed in accordance with
35 state board regulations.

36 If the applicant seeking renewal has cause to believe
37 that his county superintendent refuses to give a
38 recommendation without just cause, he shall have the
39 right, in such case, to appeal to the state superintendent
40 of schools whose responsibility it shall be to investigate
41 the matter and issue a certificate if, in his opinion, the
42 county superintendent's recommendation was withheld
43 arbitrarily.

44 A person who has reached the age of sixty and holds
45 a renewable certificate, as provided in this section, need

- 46 not present renewal credit but shall meet all other
47 renewal requirements.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

§18A-4-4. Minimum salary schedule for teachers having specialized training.

§18A-4-8a. Service personnel minimum monthly salaries.

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

§18A-4-17. Health and other facility employee salaries.

§18A-4-2. State minimum salaries for teachers.

1 STATE MINIMUM SALARY SCHEDULE

2	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
3	Years	4th	3rd	2nd	A.B.	A.B.	M.A.	M.A.	M.A.	Doc-
4	Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	torate
5	0	11,253	11,860	12,103	13,255	13,955	14,655	15,355	16,055	16,755
6	1	11,459	12,066	12,309	13,636	14,336	15,036	15,736	16,436	17,136
7	2	11,665	12,272	12,515	14,017	14,717	15,417	16,117	16,817	17,517
8	3	11,871	12,478	12,721	14,398	15,098	15,798	16,498	17,198	17,898
9	4	12,302	12,909	13,152	15,004	15,704	16,404	17,104	17,804	18,504
10	5	12,508	13,115	13,358	15,385	16,085	16,785	17,485	18,185	18,885
11	6	12,714	13,321	13,564	15,766	16,466	17,166	17,866	18,566	19,266
12	7		13,527	13,770	16,147	16,847	17,547	18,247	18,947	19,647
13	8		13,733	13,976	16,528	17,228	17,928	18,628	19,328	20,028
14	9			14,182	16,909	17,609	18,309	19,009	19,709	20,409
15	10			14,388	17,290	17,990	18,690	19,390	20,090	20,790
16	11				17,671	18,371	19,071	19,771	20,471	21,171
17	12				18,052	18,752	19,452	20,152	20,852	21,552
18	13				18,433	19,133	19,833	20,533	21,233	21,933
19	14						20,214	20,914	21,614	22,314
20	15						20,595	21,295	21,995	22,695
21	16						20,976	21,676	22,376	23,076
22	17								22,757	23,457
23	18								23,138	23,838
24	19								23,519	24,219

25 On and after the first day of July, one thousand nine
26 hundred eighty-six, each teacher shall receive the
27 amount prescribed in the "state minimum salary
28 schedule" as set forth in this section, specific additional

29 amounts prescribed in this section or article, and any
30 county supplement in effect in a county pursuant to
31 section five-a of this article during the contract year.

32 On and after the first day of July, one thousand nine
33 hundred eighty-six, six hundred dollars shall be paid
34 annually to each classroom teacher who has at least
35 twenty years of teaching experience. Such payments
36 shall be in addition to any amounts prescribed in the
37 "state minimum salary schedule," shall be paid in equal
38 monthly installments, and shall be deemed a part of the
39 state minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

1 In addition to any salary increments for principals
2 and assistant principals, in effect on the first day of
3 January, one thousand nine hundred eighty-six and paid
4 from local funds, and in addition to the county schedule
5 in effect for teachers, the county board shall pay each
6 principal a principal's salary increment and each
7 assistant principal an assistant principal's salary
8 increment as prescribed by this section commencing on
9 the first day of July, one thousand nine hundred eighty-
10 six, from state funds appropriated therefor.

11 State funds for this purpose shall be paid within the
12 West Virginia public school support plan in accordance
13 with article nine-a, chapter eighteen of this code.

14 The salary increment herein for each principal shall
15 be determined by multiplying the basic salary for
16 teachers in accordance with the classification of
17 certification and of training of said principal as
18 prescribed in this article, by the appropriate percentage
19 rate prescribed herein according to the number of
20 teachers supervised.

**STATE MINIMUM SALARY
INCREMENT RATES FOR PRINCIPALS**

	No. of Teachers Supervised	Rates
23		
24	1 - 7	5.0%
25	8 - 14	5.5%

26	15-24	6.0%
27	25-38	6.5%
28	39-57	7.0%
29	58 and up	7.5%

30 The salary increment herein for each assistant
 31 principal shall be determined in the same manner as
 32 that for principals, utilizing the number of teachers
 33 supervised by the principal under whose direction the
 34 assistant principal works, except that the percentage
 35 rate shall be fifty percent of the rate prescribed for said
 36 principal.

37 Salaries for employment beyond the minimum em-
 38 ployment term shall be at the same daily rate as the
 39 salaries for the minimum employment terms.

40 For the purpose of determining the number of
 41 teachers supervised by a principal, the county board
 42 shall use data for the second school month of the prior
 43 school term and the number of teachers shall be
 44 interpreted to mean the total number of professional
 45 educators assigned to each school on a full-time equival-
 46 ency basis: *Provided*, That due to a change in circum-
 47 stances because of consolidation or catastrophe, the
 48 county board of education shall determine what is a
 49 reasonable number of supervised teachers in order to
 50 establish the appropriate increment percentage rate.

51 No county shall reduce local funds allocated for salary
 52 increments for principals and assistant principals in
 53 effect on the first day of January, one thousand nine
 54 hundred eighty-six, and used in supplementing the state
 55 minimum salaries as provided for in this article, unless
 56 forced to do so by defeat of a special levy, or a loss in
 57 assessed values or events over which it has no control
 58 and for which the county board has received approval
 59 from the state board prior to making such reduction.

60 Nothing herein shall prevent a county board from
 61 providing, in a uniform manner, salary increments
 62 greater than those required by this section.

§18A-4-4. Minimum salary schedule for teachers having specialized training.

1 The state board of education shall establish the
2 minimum salary schedule for teachers where specialized
3 training may be required for vocational, technical and
4 adult education, and such other permits as may be
5 authorized by said board.

6 On and after the first day of July, one thousand nine
7 hundred eighty-five, any vocational industrial, technical,
8 occupational home economics, or health occupations
9 teacher who is required to hold a vocational certificate
10 and is paid a salary equivalent to the amount prescribed
11 for "A.B. + 15" training classification in the state
12 minimum salary schedule for teachers under section two
13 of this article shall, upon application therefor, receive
14 advanced salary classification and be entitled to
15 increased compensation on and after such date in
16 respect to and based upon additional semester hours,
17 approved by the state board of education and completed
18 either prior to or subsequent to such date. All such hours
19 earned must be from a regionally accredited institution
20 of higher education.

21 The advanced salary classification shall be as follows:

22 (1) Those who have earned fifteen such additional
23 semester hours shall receive an amount equal to that
24 prescribed for the "M.A." training classification under
25 section two of this article.

26 (2) Those who have earned thirty such additional
27 semester hours shall receive an amount equal to that
28 prescribed for the "M.A. + 15" training classification
29 under section two of this article.

30 (3) Those who have earned forty-five such additional
31 semester hours shall receive an amount equal to that
32 prescribed for the "M.A. + 30" training classification
33 under section two of this article.

34 Any such teacher who has a permanent vocational
35 certificate and who has earned or earns a bachelor's
36 degree prior or subsequent to the issuance of such
37 certificate shall be entitled to receive the amount
38 prescribed for the "M.A. + 30" training classification
39 upon application therefor, such advanced salary to take

40 effect immediately upon qualification therefor: *Pro-*
 41 *vided*, That any vocational teacher receiving the amount
 42 prescribed for the "M.A. + 30" training classification
 43 under prior enactments of this section who has not been
 44 issued a permanent vocational certificate shall not have
 45 such salary reduced as a result of this section: *Provided,*
 46 *however*, That any teacher with a vocational certificate
 47 and under contract for the school year one thousand nine
 48 hundred eighty-five — eighty-six who has earned a
 49 bachelor's degree prior to the end of such school year
 50 shall be entitled to receive the amount prescribed for the
 51 "M.A. + 30" training classification, upon application
 52 therefor, for the school year beginning on the first day
 53 of July, one thousand nine hundred eighty-six, and
 54 thereafter.

55 No teacher holding a valid professional certificate
 56 shall incur a salary reduction resulting from assignment
 57 out of the teacher's field by the superintendent, with the
 58 approval of the county board, under any authorization
 59 or regulation of the state board.

§18A-4-8a. Service personnel minimum monthly salaries.

1 STATE MINIMUM PAY SCALE PAY GRADE									
2	3								
4	Years	A	B	C	D	E	F	G	H
	of Em-								
	ployment								
5	0	822	842	882	932	982	1,042	1,072	1,142
6	1	842	862	902	952	1,002	1,062	1,092	1,162
7	2	862	882	922	972	1,022	1,082	1,112	1,182
8	3	882	902	942	992	1,042	1,102	1,132	1,202
9	4	902	922	962	1,012	1,062	1,122	1,152	1,222
10	5	922	942	982	1,032	1,082	1,142	1,172	1,242
11	6	942	962	1,002	1,052	1,102	1,162	1,192	1,262
12	7	962	982	1,022	1,072	1,122	1,182	1,212	1,282
13	8	982	1,002	1,042	1,092	1,142	1,202	1,232	1,302
14	9	1,002	1,022	1,062	1,112	1,162	1,222	1,252	1,322
15	10	1,022	1,042	1,082	1,132	1,182	1,242	1,272	1,342
16	11	1,042	1,062	1,102	1,152	1,202	1,262	1,292	1,362
17	12	1,062	1,082	1,122	1,172	1,222	1,282	1,312	1,382
18	13	1,082	1,102	1,142	1,192	1,242	1,302	1,332	1,402
19	14	1,102	1,122	1,162	1,212	1,262	1,322	1,352	1,422

20	15	1,122	1,142	1,182	1,232	1,282	1,342	1,372	1,442
21	16	1,142	1,162	1,202	1,252	1,302	1,362	1,392	1,462
22	17	1,162	1,182	1,222	1,272	1,322	1,382	1,412	1,482
23	18	1,182	1,202	1,242	1,292	1,342	1,402	1,432	1,502
24	19	1,202	1,222	1,262	1,312	1,362	1,422	1,452	1,522
25	20	1,222	1,242	1,282	1,332	1,382	1,442	1,472	1,542
26	21	1,242	1,262	1,302	1,352	1,402	1,462	1,492	1,562
27	22	1,262	1,282	1,322	1,372	1,422	1,482	1,512	1,582
28	23	1,282	1,302	1,342	1,392	1,442	1,502	1,532	1,602
29	24	1,302	1,322	1,362	1,412	1,462	1,522	1,552	1,622
30	25	1,322	1,342	1,382	1,432	1,482	1,542	1,572	1,642

31	CLASS TITLE	PAY GRADE
32	Accountant I	D
33	Accountant II.....	E
34	Accountant III.....	F
35	Aide I	A
36	Aide II	B
37	Aide III	C
38	Aide IV	D
39	Audiovisual Technician.....	C
40	Auditor	G
41	Bus Operator	D
42	Buyer	F
43	Cabinetmaker	G
44	Cafeteria Manager.....	D
45	Carpenter I.....	E
46	Carpenter II.....	F
47	Chief Mechanic	G
48	Clerk I	B
49	Clerk II	C
50	Computer Operator	E
51	Cook I.....	A
52	Cook II	B
53	Cook III	C
54	Crew Leader.....	F
55	Custodian I	A
56	Custodian II	B
57	Custodian III	C
58	Custodian IV	D
59	Director or Coordinator of Services	H
60	Draftsman	D

61	Electrician I.....	F
62	Electrician II.....	G
63	Electronic Technician I.....	F
64	Electronic Technician II.....	G
65	Executive Secretary.....	G
66	Food Services Supervisor.....	G
67	Foreman.....	G
68	General Maintenance.....	C
69	Glazier.....	D
70	Graphic Artist.....	D
71	Groundsman.....	B
72	Handyman.....	B
73	Heating and Air Conditioning Mechanic I.....	E
74	Heating and Air Conditioning Mechanic II.....	G
75	Heavy Equipment Operator.....	E
76	Inventory Supervisor.....	D
77	Key Punch Operator.....	B
78	Locksmith.....	G
79	Lubrication Man.....	C
80	Machinist.....	F
81	Mail Clerk.....	D
82	Maintenance Clerk.....	C
83	Mason.....	G
84	Mechanic.....	F
85	Mechanic Assistant.....	E
86	Office Equipment Repairman I.....	F
87	Office Equipment Repairman II.....	G
88	Painter.....	E
89	Plumber I.....	E
90	Plumber II.....	G
91	Printing Operator.....	B
92	Printing Supervisor.....	D
93	Programmer.....	H
94	Roofing/Sheet Metal Mechanic.....	F
95	Sanitation Plant Operator.....	F
96	School Bus Supervisor.....	E
97	Secretary I.....	D
98	Secretary II.....	E
99	Secretary III.....	F
100	Supervisor of Maintenance.....	H
101	Supervisor of Transportation.....	H
102	Switchboard Operator-Receptionist.....	D

103	Truck Driver	D
104	Warehouse Clerk.....	C
105	Watchman.....	B
106	Welder	F

107 On and after the first day of July, one thousand nine
 108 hundred eighty-six, the minimum monthly pay for each
 109 service employee whose employment is for a period of
 110 more than three and one-half hours a day shall be at
 111 least the amounts indicated in the "state minimum pay
 112 scale" as set forth in this section, and the minimum
 113 monthly pay for each service employee whose employ-
 114 ment is for a period of three and one-half hours or less
 115 a day shall be at least one half the amount indicated in
 116 the "state minimum pay scale" set forth in this section.

117 Any service employee required to work on any legal
 118 school holiday shall be paid at a rate one and one-half
 119 times his usual hourly rate.

120 Any full-time service personnel required to work in
 121 excess of their normal working day during any week
 122 which contains a school holiday for which they are paid
 123 shall be paid for such additional hours or fraction
 124 thereof at a rate of one and one-half times their usual
 125 hourly rate and paid entirely from county board of
 126 education funds.

127 No service employee shall have his daily work
 128 schedule changed during the school year without his
 129 written consent, and his required daily work hours shall
 130 not be changed to prevent the payment of time and one-
 131 half wages or the employment of another employee.

**§18A-4-10. Personal leave for illness and other causes;
 leave banks; substitutes.**

1 At the beginning of the employment term, any full-
 2 time employee of a county board of education shall be
 3 entitled annually to at least one and one-half days
 4 personal leave for each employment month or major
 5 fraction thereof in the employee's employment term.
 6 Unused leave shall be accumulative without limitation
 7 and shall be transferable within the state. A change in
 8 job assignment during the school year shall in no way

9 affect the employee's rights or benefits.

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

46 The board may establish reasonable regulations for
47 reporting and verification of absences for cause; and if
48 any error in reporting absences should occur it shall
49 have authority to make necessary salary adjustments in

50 the next pay after the employee has returned to duty or
51 in the final pay if the absence should occur during the
52 last month of the employment term.

53 A county board of education may establish a personal
54 leave bank or banks to which employees may contribute
55 no more than two days of personal leave per school year:
56 *Provided*, That such bank or banks be established either
57 jointly or separately for both professional personnel and
58 school service personnel and that a bank be available to
59 all school personnel. Such personal leave bank shall be
60 established and operated pursuant to rules and
61 regulations adopted by the county board: *Provided*,
62 *however*, That such rules and regulations may limit the
63 maximum number of days used by an employee, shall
64 require that leave bank days be used only by an active
65 employee with less than five days accumulated personal
66 leave who is absent from work due to accident or illness
67 of such employee, and shall prohibit the use of such days
68 with the extension of insurance coverage pursuant to
69 section twelve, article sixteen, chapter five of this code.
70 Such rules and regulations shall require that contribu-
71 tions shall reduce, to the extent of such contribution, the
72 number of personal leave days to which an employee is
73 entitled by this section: *Provided further*, That such
74 contribution shall not reduce personal leave days
75 without cause to which an employee is entitled. No
76 employee may be compelled to contribute to such
77 personal leave bank.

78 When an allowable absence does not directly affect the
79 instruction of the pupils or when a substitute employee
80 may not be required because of the nature of the work
81 and the duration of the cause for the allowable absence
82 of the regular employee, the administration, subject to
83 board approval, may use its discretion as to the need for
84 a substitute where limited absence may prevail.

85 If funds in any fiscal year, including transfers, are
86 insufficient to pay the full cost of substitutes for meeting
87 the provisions of this section, the remainder shall be
88 paid on or before the thirty-first day of August from the
89 budget of the next fiscal year.

90 Any board of education shall have authority to
91 supplement such leave provisions in any manner it may
92 deem advisable in accordance with applicable rules and
93 regulations of the state board and the provisions of this
94 chapter and chapter eighteen of this code.

§18A-4-17. Health and other facility employee salaries.

1 (a) The minimum salary scale for professional person-
2 nel and service personnel employed by the state
3 department of education to provide educational and
4 support services to residents of state department of
5 health facilities and in the West Virginia schools for the
6 deaf and the blind shall be the same as set forth in
7 sections two, three and eight-a of this article. Addition-
8 ally, such personnel shall receive the equivalent of
9 salary supplements paid to professional and service
10 personnel employed by the county board of education in
11 the county wherein each facility is located, as set forth
12 in sections five-a and five-b of this article. Professional
13 personnel and service personnel in these facilities who
14 earn advanced classification of training after the
15 effective date of this section shall be paid such advanced
16 salary from the date such classification of training is
17 earned.

18 (b) Professional personnel employed by the depart-
19 ment to provide educational service to residents in state
20 department of health facilities or in the West Virginia
21 schools for the deaf and the blind, shall be afforded all
22 the rights, privileges and benefits established for such
23 professional personnel under this article: *Provided*, That
24 such benefits shall apply only within the facility at
25 which employed: *Provided, however*, That under
26 circumstances requiring a reduction in force of the
27 professional personnel at a state department of health
28 facility, the rights, privileges and benefits of the
29 professional personnel at such facility shall be transfer-
30 able for the purposes of employment at other depart-
31 ment of health facilities.

32 (c) Nothing contained in this section shall be construed
33 to mean that professional personnel and service person-
34 nel employed by the department of education to provide

35 educational and support services to residents in state
36 department of health facilities and the West Virginia
37 schools for the deaf and the blind are other than state
38 employees.

CHAPTER 15

(S. B. 20—By Mr. Tonkovich, Mr. President, by request, and Senator Harman)

[Passed May 20, 1986; in effect from passage. Approved by the Governor.]

AN ACT to provide a stable method of financing the operation of the Hamlin-Lincoln county public libraries, Lincoln County, West Virginia, organized under article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Be it enacted by the Legislature of West Virginia:

HAMLIN-LINCOLN COUNTY PUBLIC LIBRARIES.

- §1. Legislative findings and purpose.
- §2. Levies by county commission, county board of education and city of Hamlin to support Hamlin-Lincoln county public libraries.
- §3. Deposit and disbursement of funds.
- §4. Status of employees.
- §5. Effect of future amendments of general law.
- §6. Severability.

§1. Legislative findings and purpose.

1 The Legislature finds: (1) That in the year one thousand
2 nine hundred seventy-two, the governing authority of the
3 town of Hamlin located in Lincoln County, West Virginia,
4 pursuant to authority granted to it in section two, article
5 one, chapter ten of the code of West Virginia, one thousand
6 nine hundred thirty-one, as amended, created the Hamlin
7 Public Library; (2) that this library is operated by a board of
8 directors appointed by the governing authority of the town
9 of Hamlin, as provided in section five of said article one,
10 which board is a public corporation under section nine of
11 said article one, having all the powers and duties vested in
12 library boards by article one of said chapter ten; (3) that the
13 county commission and the county board of education, both
14 of Lincoln County, have entered into contracts with this
15 library board, as permitted under section four of said article
16 one, for the library board to make its library materials and

17 services available without charge to all persons living in
18 Lincoln County; (4) that branch libraries have been
19 established in Alum Creek and Branchland, both located in
20 Lincoln County; and (5) that other areas of Lincoln County
21 have expressed interest in having branches of this library
22 established in their area. The Legislature further finds and
23 declares it to be in the public interest to provide for the
24 Hamlin-Lincoln county public library a stable method of
25 financing its operation to better serve persons in Lincoln
26 County.

§2. **Levies by county commission, county board of education
and city of Hamlin to support Hamlin-Lincoln county
public libraries.**

1 (a) In order to provide for the support, maintenance and
2 operation of the Hamlin-Lincoln County public libraries,
3 Lincoln County, West Virginia, and any and all branches
4 thereof, the Lincoln County board of education, the county
5 commission of Lincoln County and the city of Hamlin,
6 hereinafter described as the supporting agencies, shall,
7 upon written request by the board of directors of the
8 Hamlin-Lincoln County public libraries, levy annually on
9 each one hundred dollars of assessed valuation of the
10 property taxable by it according to the last assessment for
11 state and county purposes, amounts as follows, for the fiscal
12 year beginning the first day of July, one thousand nine
13 hundred eighty-six, and each succeeding fiscal year:

14 (1) By the board of education of Lincoln County, from
15 special and excess levies available to the board: On Class I
16 property, seven tenths (7/10) of one cent per hundred; on
17 Class II property, one and four-tenths (1.4) cents per
18 hundred; on Class III property, two and eight-tenths (2.8)
19 cents per hundred; and on Class IV property, two and
20 eight-tenths (2.8) cents per hundred.

21 (2) By the county commission of Lincoln County: On
22 Class I property, four tenths (4/10) of one cent per hundred;
23 on Class II property, eight tenths (8/10) of one cent per
24 hundred; on Class III property, one and six-tenths (1.6)
25 cents per hundred; and on Class IV property, one and six-
26 tenths (1.6) cents per hundred.

27 (3) By the city of Hamlin: On Class I property, one and
28 two-tenths (1.2) cents per hundred; on Class II property,

29 two and four-tenths (2.4) cents per hundred; and on Class IV
30 property, four and eight-tenths (4.8) cents per hundred.

31 (b) Each year the board of directors of the Hamlin-
32 Lincoln County public libraries may request each of the
33 three supporting agencies to levy within the rates
34 prescribed in subsection (a), at the rate specified by the
35 board, on each one hundred dollars of assessed value of
36 property of the same class; and each of the three supporting
37 agencies shall levy as aforesaid and appropriate the revenue
38 derived from such levies to the Hamlin-Lincoln County
39 public libraries. In addition, each supporting agency may
40 appropriate to the public library any other general or
41 specific revenues or excess levies.

§3. Deposit and disbursement of funds.

1 (a) All money collected or appropriated by the three
2 supporting agencies for library purposes shall be deposited
3 as directed by the board of directors of the Hamlin-Lincoln
4 County public libraries in a bank or savings account
5 specified by the board.

6 (b) *Disbursement of funds.*—All moneys appropriated to
7 the Hamlin-Lincoln County public libraries and all income
8 realized by the operation of the public libraries shall be
9 used by the board of directors for the support, maintenance
10 and operation of the public libraries, and disbursed by it for
11 payment of: Salaries and wages; books and other library
12 materials such as periodicals, pamphlets, papers, works of
13 art, records and tapes; machinery, equipment and
14 furnishings; supplies and services; other costs and expenses
15 of operating and maintaining public libraries, including the
16 cost of maintaining, repairing, improving and replacing its
17 properties; and costs of acquiring additional property:
18 *Provided*, That all money appropriated by the city of
19 Hamlin shall be used only for the public library, or branches
20 thereof, located within the corporate limits of the city of
21 Hamlin.

22 (c) *Accumulated surplus.*—The board is hereby vested
23 with authority to accumulate a surplus from year to year
24 over and above the amount currently required for the
25 proper operation, maintenance and management of present
26 library facilities. Such accumulated surplus may be used
27 for the purchase or lease of new library facilities or

28 additions to existing library facilities, including the
29 equipping of such new facilities or additions to existing
30 facilities for library purposes; and to pledge by the
31 execution and delivery of appropriate legal instruments,
32 any real estate the board of directors may now own or which
33 it may hereafter acquire for the repayment of borrowed
34 funds; and the principal thereof and the interest thereon
35 may be paid out of the proceeds of the levies hereinbefore
36 authorized.

§4. Status of employees.

1 All employees of the Hamlin-Lincoln County public
2 library system shall be entitled to the benefits of the
3 provisions of chapter twenty-three and of article seven,
4 chapter five of the code of West Virginia, one thousand nine
5 hundred thirty-one, as amended.

§5. Effect of future amendments of general law.

1 Amendments to article one of said chapter ten and to
2 other general laws shall not control this act except to the
3 extent that such amendments do not conflict with the
4 provisions of this act, unless the intent to amend this act is
5 expressly stated.

§6. Severability.

1 If any provision hereof is held to be invalid by a court of
2 competent jurisdiction, such invalidities shall not affect
3 other provisions of this act which can be given effect
4 without the invalid provision, and to this end, the
5 provisions of this act are declared to be severable.

CHAPTER 16

(H. B. 142—By Delegate Murensky and Delegate E. Martin)

[Passed May 22, 1986; in effect July 1, 1986. Vetoed by the Governor. Passed over veto.]

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

definitions specifically providing for magistrate court clerks, deputy clerks and magistrate assistants to be eligible for the incremental salary increases provided in said article five even though their maximum compensation is set by statute and providing for such incremental salary increases to be in addition to otherwise maximum statutorily set compensation and definitions providing for any part-year of employee service to be dropped in arriving at full years of total service only after final total is computed, where an employee has worked for more than one state employer.

Be it enacted by the Legislature of West Virginia:

That section one, article five, 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 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.

1 For the purposes of this article: (1) "Eligible em-
2 ployee" means any regular full-time employee of the
3 state or any spending unit thereof who is eligible for
4 membership in any state retirement system of the state
5 of West Virginia or other retirement plan authorized by
6 the state: *Provided*, That the mandatory salary increase
7 required by this article shall not apply to any faculty
8 employee at public institutions of higher learning or any
9 employee of the state whose compensation is fixed by
10 statute or by statutory schedule, (except that the clerks,
11 deputy clerks and magistrate assistants of magistrate
12 courts shall be eligible for the incremental salary
13 increases provided in this article and with such
14 increases to be allowable in addition to the maximum
15 salaries and compensation for such employee offices
16 under the magistrate court system statutes of article
17 one, chapter fifty of the code), nor shall this article be
18 construed to mandate an increase in the salary of any
19 elected or appointed officer of the states; (2) "years of
20 service" means full years of totaled service as an
21 employee of the state of West Virginia; (3) "spending
22 unit" means any state office, department, agency, board,
23 commission, institution, bureau or other designated

- 24 body authorized to hire employees.

CHAPTER 17

(H. B. 149—By Delegate Shepherd and Delegate Damron)

[Passed May 22, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four and six, article twenty-b of said chapter thirty-three; to amend and reenact sections two, three, four and five, article twenty-c of said chapter thirty-three; to amend and reenact sections eight, nine and ten, article seven-b, chapter fifty-five of said code; and to further amend said article seven-b by adding thereto a new section, designated section eleven, relating to professional liability generally; describing the scope of article pertaining to rates and rating organizations; correcting an erroneous section reference in section two, article twenty, chapter thirty-three of said code; describing the scope of article pertaining to rates and malpractice insurance policies; restricting the scope of article twenty-b, chapter thirty-three of said code to medical malpractice insurance policies only; establishing procedures for disapproval of filings; requiring the commissioner to hold a public hearing within the initial sixty day waiting period on certain filings which request a rate increase; providing for review by the commissioner of rules, rates and rating plans; requiring insurers to submit to the commissioner certain information annually; deleting provisions of the law which require reporting as to individual cases and authorizing reporting in aggregate figures; requiring the commissioner, by legislative rule, to establish methods of allocating investment and other income; describing the circumstances under which a policy of malpractice may be canceled; deleting provisions of the law relating to prohibitions on nonrenewals of insurance policies; requiring insurers to provide

reasons for cancellation; requiring a notice period for cancellation; requiring a sixty day notice in the case of a nonrenewal of a policy or contract providing malpractice insurance; providing for hearings and review to insured persons aggrieved by cancellations; establishing a limit on liability for noneconomic loss in a medical professional liability action, and deleting from the law a provision which made an instruction to the jury as to the maximum amount recoverable for such loss mandatory; providing for the manner in which joint and several liability shall be determined in a medical professional liability action involving multiple defendants; describing when provisions become effective; providing that the provisions of article seven-b, chapter fifty-five of said code shall not be applicable to injuries which occur before the effective date; and providing for severability.

Be it enacted by the Legislature of West Virginia:

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

Chapter

33. Insurance.

55. Actions, Suits and Arbitration; Judicial Sales.

CHAPTER 33. INSURANCE.

Article

20. Rates and Rating Organizations.

20B. Rates and Malpractice Insurance Policies.

20C. Cancellation and Nonrenewal of Malpractice Insurance Policies.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-2. Scope of article.

1 (a) This article applies to fire, marine, casualty, and

2 surety insurance, on risks or operations in this state.

3 (b) This article shall not apply:

4 (1) To reinsurance, other than joint reinsurance to the
5 extent stated in section eleven of this article;

6 (2) To life or accident and sickness insurance;

7 (3) To insurance of vessels or craft, their cargoes,
8 marine builders' risks, marine protection and indem-
9 nity, or other risks commonly insured under marine, as
10 distinguished from inland marine, insurance policies;

11 (4) To insurance against loss of or damage to aircraft,
12 including their accessories and equipment, or against
13 liability, other than workers' compensation and employ-
14 er's liability, arising out of the ownership, maintenance
15 or use of aircraft;

16 (5) To title insurance;

17 (6) To malpractice insurance insofar as the provisions
18 of this article directly conflict and thereby are sup-
19 planted by article twenty-b of this chapter.

20 (c) If any kind of insurance, subdivision or combina-
21 tion thereof, or type of coverage, is subject to both the
22 provisions of this article expressly applicable to casualty
23 and surety insurance and to those expressly applicable
24 to fire and marine insurance, the commissioner may
25 apply to filings made for such kind of insurance the
26 provisions of this article which are in his judgment most
27 suitable.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-1. Scope of article.

§33-20B-4. Disapproval of filings.

§33-20B-6. Rate review and reporting.

§33-20B-1. Scope of article.

1 This article applies to medical malpractice insurance
2 policies only. Nothing in this article shall be construed
3 to supplant any provision of article twenty of this
4 chapter which does not directly conflict with the
5 provisions herein.

§33-20B-4. Disapproval of filings.

1 (a) If within the waiting period or any extension
2 thereof as provided in subsection (b), section three of this
3 article, the commissioner finds that a filing does not
4 meet the requirements of this article, he shall send to
5 the insurer or rating organization which made such
6 filing written notice of disapproval of such filing
7 specifying therein in what respects he finds such filing
8 fails to meet the requirements of this article and stating
9 that such filing shall not be effective. Within thirty days
10 from the issuance of written notice of disapproval, any
11 insurer or rating organization aggrieved by such
12 disapproval of any filing may request a hearing thereon
13 pursuant to section thirteen, article two of this chapter.

14 (b) If at any time subsequent to the waiting period or
15 any extension thereof as provided in subsection (b),
16 section three of this article, the commissioner finds that
17 a filing does not meet the requirements of this article,
18 he shall send to the insurer or rating organization which
19 made such filing a written order specifying in what
20 respect he finds that such filing fails to meet the
21 requirements of this article and a date, not less than
22 thirty days from the issuance of such order, when such
23 filing shall be deemed no longer effective. Within thirty
24 days from the issuance of such order, any insurer or
25 rating organization aggrieved by such order may
26 request a hearing thereon pursuant to section thirteen,
27 article two of this chapter. Any such order shall not
28 affect any contract or policy made or issued prior to the
29 expiration date set forth in such order.

30 (c) Any person or organization aggrieved by any filing
31 which is in effect or the application thereof may request
32 a hearing thereon pursuant to section thirteen, article
33 two of this chapter. The insurer or rating organization
34 which made such filing shall be notified in writing upon
35 receipt of any such request for hearing and thereby
36 made a party to such hearing. Upon such hearing, if the
37 commissioner finds that such filing fails to meet the
38 requirements of this article, he shall issue an order
39 specifying in what respects he so finds and a date, not
40 less than thirty days from the issuance of such order,

41 when such filings shall be deemed no longer effective.

42 (d) Within the initial sixty-day waiting period, the
43 commissioner shall hold a public hearing upon every
44 filing which requests an increase in general rates of ten
45 percent or more and upon every filing which, in the
46 opinion of the commissioner, is of such import that it
47 will affect the public. The insurer or rating organization
48 which made such filing shall be notified in writing not
49 less than fifteen days prior to the hearing date. Notice
50 of the time, place and filing to be considered shall be
51 published as a Class II legal advertisement in every
52 county in the state in accordance with article three,
53 chapter fifty-nine of this code.

§33-20B-6. Rate review and reporting.

1 (a) The commissioner shall review annually the rules,
2 rates and rating plans filed and in effect for each
3 insurer providing five percent or more of the malprac-
4 tice insurance coverage in this state in the preceding
5 calendar year to determine whether such filings
6 continue to meet the requirements of this article and
7 whether such filings are unfair or inappropriate given
8 the loss experience in this state in the preceding year.

9 Within two hundred forty days of the effective date
10 of this article, the commissioner shall promulgate
11 legislative rules pursuant to article three, chapter
12 twenty-nine-a of this code, establishing procedures for
13 the fair and appropriate evaluation and determination
14 of the past loss experience and prospective or projected
15 loss experience of insurers within and outside this state,
16 actual past expenses incurred in this state and demon-
17 strable prospective or projected expenses applicable to
18 this state.

19 (b) Within one hundred eighty days of the effective
20 date of this article, the commissioner shall promulgate
21 legislative rules pursuant to article three, chapter
22 twenty-nine-a of this code, establishing procedures
23 whereby each insurer providing five percent or more of
24 the malpractice insurance coverage in this state
25 annually shall submit to the commissioner the following
26 information:

- 27 (1) The number of claims filed per category;
28 (2) The number of civil actions filed;
29 (3) The number of civil actions compromised or
30 settled;
31 (4) The number of verdicts in civil actions;
32 (5) The number of civil actions appealed;
33 (6) The number of civil actions dismissed;
34 (7) The total dollar amount paid in claims comprom-
35 ised or settled;
36 (8) The total dollar amount paid pursuant to verdicts
37 in civil actions;
38 (9) The number of claims closed without payment and
39 the amount held in reserve for all such claims;
40 (10) The total dollar amount expended for loss
41 adjustment expenses, commissions and brokerage
42 expenses;
43 (11) The total dollar amount expended in defense and
44 litigation of claims;
45 (12) The total dollar amount held in reserve for
46 anticipated claims;
47 (13) Net profit or loss;
48 (14) Investment and other income on net realized
49 capital gains and loss reserves and unearned premiums;
50 and
51 (15) The number of malpractice insurance policies
52 canceled for reasons other than nonpayment of
53 premiums.
- 54 The commissioner shall establish in such rules
55 methods of allocating investment and other income
56 among capital gains, loss reserves, unearned premiums
57 and other assets if an insurer does not separately
58 account for and allocate such income.
- 59 Any insurer who fails to submit any and all such
60 information to the commissioner as required by this

61 subsection in accordance with the regulations promul-
62 gated hereunder shall be fined ten thousand dollars for
63 each of the first five such failures per year and shall be
64 fined one hundred thousand dollars for the sixth and
65 each subsequent such failure per year.

66 (c) Beginning in the year one thousand nine hundred
67 eighty-six, the commissioner shall report annually
68 during the month of November to the joint standing
69 committee on the judiciary the following information
70 pertaining to each insurer providing five percent or
71 more of the malpractice insurance coverage in this state:

72 (1) The loss experience within the state during the
73 preceding calendar year;

74 (2) The rules, rates and rating plans in effect on the
75 date of such report;

76 (3) The investment portfolio, including reserves, and
77 the annual rate of return thereon; and

78 (4) The information submitted to the commissioner
79 pursuant to the regulations promulgated by authority of
80 subsection (b) of this section.

ARTICLE 20C. CANCELLATION AND NONRENEWAL OF MAL- PRACTICE INSURANCE POLICIES.

§33-20C-2. Cancellation prohibited except for specified reasons; notice.

§33-20C-3. Insurer to specify reasons for cancellation.

§33-20C-4. Notice period for cancellation; sixty day notice required for nonrenewal.

§33-20C-5. Hearings and review.

§33-20C-2. Cancellation prohibited except for specified reasons; notice.

1 No insurer once having issued or delivered a policy
2 providing malpractice insurance in this state shall
3 cancel such policy, except for one or more of the
4 following reasons:

5 (a) The named insured fails to discharge any of his
6 obligations to pay premiums for such policy or any
7 installment thereof within a reasonable time of the due
8 date;

9 (b) The policy was obtained through material

10 misrepresentation;

11 (c) The insured violates any of the material terms and
12 conditions of the policy;

13 (d) The insured's experiences render him an increased
14 risk;

15 (e) The unavailability of reinsurance, upon sufficient
16 proof thereof being supplied to the commissioner.

17 Any purported cancellation of a policy providing
18 malpractice insurance attempted in contravention of
19 this section shall be void.

§33-20C-3. Insurer to specify reasons for cancellation.

1 In every instance in which a policy or contract of
2 malpractice insurance is canceled by the insurer, the
3 insurer or his duly authorized agent shall cite within the
4 written notice of the action the allowable reason in
5 section two of this article for which such action was
6 taken and shall state with specificity the circumstances
7 giving rise to the allowable reason so cited. The notice
8 of the action shall further state that the insured has a
9 right to request a hearing pursuant to section five of this
10 article within thirty days.

**§33-20C-4. Notice period for cancellation; sixty day notice
required for nonrenewal.**

1 (a) No insurer shall fail to renew a policy or contract
2 providing malpractice insurance unless written notice of
3 such nonrenewal is forwarded to the insured by certified
4 mail, return receipt requested, not less than sixty days
5 prior to the expiration date of such policy.

6 (b) No insurer shall cancel a policy or contract
7 providing malpractice insurance during the term of
8 such policy unless written notice of such cancellation is
9 forwarded to the insured by certified mail, return
10 receipt requested, not more than thirty days after the
11 reason for such cancellation, as provided in section two
12 of this article, arose or occurred or the insurer learned
13 that it arose or occurred and not less than thirty days
14 prior to the effective cancellation date.

§33-20C-5. Hearings and review.

1 Any insured aggrieved by the cancellation of a policy
2 or contract providing malpractice insurance may
3 request a hearing before the commissioner or his
4 designee within thirty days of the receipt of any such
5 notice. The hearing shall be conducted pursuant to
6 section thirteen, article two of this chapter. The policy
7 shall remain in effect until entry of the commissioner's
8 order. Any party aggrieved by an order of the commis-
9 sioner may seek judicial review in the circuit court of
10 the county in which the insured resides in accordance
11 with section fourteen, article two of this chapter.

**CHAPTER 55. ACTIONS, SUITS AND
ARBITRATION; JUDICIAL SALE.****ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.**

§55-7B-8. Limit on liability for noneconomic loss.

§55-7B-9. Joint and several liability.

§55-7B-10. Effective date; applicability of provisions.

§55-7B-11. Severability.

§55-7B-8. Limit on liability for noneconomic loss.

1 In any medical professional liability action brought
2 against a health care provider, the maximum amount
3 recoverable as damages for noneconomic loss shall not
4 exceed one million dollars and the jury may be so
5 instructed.

§55-7B-9. Joint and several liability.

1 (a) In the trial of a medical professional liability
2 action against a health care provider involving multiple
3 defendants, the jury shall be required to report its
4 findings to the court on a form provided by the court
5 which contains each of the possible verdicts as deter-
6 mined by the court.

7 (b) In every medical professional liability action, the
8 court shall make findings as to the total dollar amount
9 awarded as damages to each plaintiff. The court shall
10 enter judgment of joint and several liability against
11 every defendant which bears twenty-five percent or
12 more of the negligence attributable to all defendants.

13 The court shall enter judgment of several, but not joint,
14 liability against and among all defendants which bear
15 less than twenty-five percent of the negligence attribu-
16 table to all defendants.

17 (c) Each defendant against whom a judgment of joint
18 and several liability is entered in a medical professional
19 liability action pursuant to subsection (b) of this section
20 is liable to each plaintiff for all or any part of the total
21 dollar amount awarded regardless of the percentage of
22 negligence attributable to him. A right of contribution
23 exists in favor of each defendant who has paid to a
24 plaintiff more than the percentage of the total dollar
25 amount awarded attributable to him relative to the
26 percentage of negligence attributable to him. The total
27 amount of recovery for contribution is limited to the
28 amount paid by the defendant to a plaintiff in excess of
29 the percentage of the total dollar amount awarded
30 attributable to him relative to the percentage of
31 negligence attributable to him. No right of contribution
32 exists against any defendant who entered into a good
33 faith settlement with the plaintiff prior to the jury's
34 report of its findings to the court or the court's findings
35 as to the total dollar amount awarded as damages.

36 (d) Where a right of contribution exists in a medical
37 professional liability action pursuant to subsection (c) of
38 this section, the findings of the court or jury as to the
39 percentage of negligence and liability of the several
40 defendants to the plaintiff shall be binding among such
41 defendants as determining their rights of contribution.

§55-7B-10. Effective date; applicability of provisions.

1 The provisions of House Bill 149, enacted during the
2 first extraordinary session of the Legislature, 1986, shall
3 be effective at the same time that the provisions of
4 Enrolled Senate Bill 714, enacted during the Regular
5 session, 1986, become effective, and the provisions of
6 said House Bill 149 shall be deemed to amend the
7 provisions of Enrolled Senate Bill 714. The provisions
8 of this article shall not apply to injuries which occur
9 before the effective date of said Enrolled Senate Bill
10 714.

§55-7B-11. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid,
3 such invalidity shall not affect other provisions or
4 applications of this article, and to this end the provisions
5 of this article are declared to be severable.

CHAPTER 18

(S. B. 5—By Mr. Tonkovich, Mr. President, by request, and Senator Harman)

[Passed May 18, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, four, eight, seventeen and eighteen, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal waterworks systems and electric power systems; authorizing municipalities to acquire, construct, establish, extend, equip, repair, maintain and operate or lease to others for operation, a waterworks system, or construct, maintain and operate additions, betterments and improvements to an existing waterworks or electric power system; prohibiting municipalities from serving or supplying water or electricity within corporate limits of another municipality without consent; defining waterworks system and electric power system; relating to estimation of cost by municipality; relating to discretionary issuance of revenue bonds to finance; relating to content of ordinance respecting bond issuance; relating to issuance of bonds and the terms and conditions thereof; relating to the tax exempt status of bonds; relating to lien provisions; relating to the payment of bonds; relating to the sinking fund; relating to the depreciation fund; relating to the mortgage lien; providing for security interest in property of system or other related municipal property; relating to remedies of bondholders; relating to priority of mortgage or deed of trust upon recordation; relating to power of municipality to accept or procure grants, loans or advances or enter into financing agreements; relating to repayment of loans or advances or other agreements and any interest; relating to security for loans, advances and agreements;

relating to power to enter into necessary contracts and agreements; relating to loans, advances and agreements not a general obligation of municipality; relating to establishment of full authority; providing relation to other statutes; and providing authority is cumulative.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART 1. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITION.

- §8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.
- §8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.
- §8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens.
- §8-19-17. Grants, loans, advances and agreements.
- §8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

1 Subject to and in accordance with the provisions of this
 2 article, any municipality may acquire, construct, establish,
 3 extend, equip, repair, maintain and operate, or lease to
 4 others for operation, a waterworks system, or construct,
 5 maintain and operate additions, betterments and
 6 improvements to an existing waterworks system or an
 7 existing electric power system, notwithstanding any
 8 provision or limitation to the contrary in any other law or
 9 charter: *Provided*, That such municipality shall not serve or
 10 supply water facilities or electric power facilities or
 11 services within the corporate limits of any other
 12 municipality without the consent of the governing body of

13 such other municipality.

14 When used in this article, the term "waterworks system"
15 shall be construed to mean and include a waterworks
16 system in its entirety or any integral part thereof, including
17 mains, hydrants, meters, valves, standpipes, storage tanks,
18 pump tanks, pumping stations, intakes, wells, impounding
19 reservoirs, pumps, machinery, purification plants,
20 softening apparatus and all other facilities necessary,
21 appropriate, useful, convenient or incidental in connection
22 with or to a water supply system.

23 When used in this article, the term "electric power
24 system" means a system or facility which produces electric
25 power in its entirety or provides for the distribution of
26 electric power for local consumption and use or for
27 distribution and resale or any combination thereof, or any
28 integral part thereof, including, but not limited to, power
29 lines and wires, power poles, guy wires, insulators,
30 transformers, generators, cables, power line towers, voltage
31 regulators, meters, power substations, machinery and all
32 other facilities necessary, appropriate, useful or convenient
33 or incidental in connection with or to an electric power
34 supply system.

PART IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

1 Whenever a municipality shall, under the provisions of
2 this article, determine to acquire, by purchase or otherwise,
3 construct, establish, extend or equip a waterworks system,
4 or to construct any additions, betterments or improvements
5 to any waterworks or electric power system, it shall cause
6 an estimate to be made of the cost thereof, and may, by
7 ordinance, provide for the issuance of revenue bonds under
8 the provisions of this article, which ordinance shall set forth
9 a brief description of the contemplated undertaking, the
10 estimated cost thereof, the amount, rate or rates of interest,
11 the time and place of payment, and other details in
12 connection with the issuance of the bonds. Such bonds shall
13 be in such form and shall be negotiated and sold in such
14 manner and upon such terms as the governing body of such
15 municipality may by ordinance specify. All such bonds and
16 the interest thereon, and all properties and revenues and

17 income derived from such waterworks or electric power
18 system, shall be exempt from all taxation by this state, or
19 any county, municipality, political subdivision or agency
20 thereof. Such bonds shall bear interest at a rate per annum
21 set by the municipality, payable at such times, and shall be
22 payable as to principal at such times, not exceeding fifty
23 years from their date, and at such place or places, within or
24 without the state, as shall be prescribed in the ordinance
25 providing for their issuance. Unless the governing body of
26 the municipality shall otherwise determine, such ordinance
27 shall also declare that a statutory mortgage lien shall exist
28 upon the property so to be acquired, constructed,
29 established, extended or equipped, fix minimum rates or
30 charges for water or electricity to be collected prior to the
31 payment of all of said bonds and shall pledge the revenues
32 derived from the waterworks or electric power system for
33 the purpose of paying such bonds and interest thereon,
34 which pledge shall definitely fix and determine the amount
35 of revenues which shall be necessary to be set apart and
36 applied to the payment of the principal of and interest upon
37 the bonds and the proportion of the balance of such
38 revenues, which are to be set aside as a proper and adequate
39 depreciation account, and the remainder shall be set aside
40 for the reasonable and proper maintenance and operation
41 thereof. The rates or charges to be charged for the services
42 from such waterworks or electric power system shall be
43 sufficient at all times to provide for the payment of interest
44 upon all bonds and to create a sinking fund to pay the
45 principal thereof as and when the same become due, and
46 reasonable reserves therefor, and to provide for the repair,
47 maintenance and operation of the waterworks or electric
48 power system, and to provide an adequate depreciation
49 fund, and to make any other payments which shall be
50 required or provided for in the ordinance authorizing the
51 issuance of said bonds.

§8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens.

1 Unless the governing body shall otherwise determine in
2 the ordinance authorizing the issuance of bonds under this
3 article, there shall be and there is hereby created and
4 granted a statutory mortgage lien upon the waterworks or
5 electric power system so acquired, constructed, established,

6 equipped, extended or improved from the proceeds of bonds
7 hereby authorized to be issued, which shall exist in favor of
8 the holder of said bonds and each of them, and to and in
9 favor of the holder of the coupons attached to said bonds,
10 and such waterworks or electric power system shall remain
11 subject to such statutory mortgage lien until payment in full
12 of the principal of and interest upon said bonds.

13 Any municipality in acquiring an existing waterworks
14 system or in improving an existing waterworks or electric
15 power system may provide that financing therefor may be
16 made by issuing revenue bonds and delivering the same at
17 such prices as may be agreed upon within the limitations
18 prescribed in section six hereof. Any revenue bonds so
19 issued to provide financing for such an existing waterworks
20 or for any improvements to an existing waterworks or
21 electric power system may be secured by a mortgage or deed
22 of trust upon and security interest in the property so
23 acquired or improved or any other interest of the
24 municipality in property related thereto as determined by
25 the municipality in the ordinance authorizing the issuance
26 of such revenue bonds; and in such event the holders thereof
27 shall have, in addition to any other remedies and rights
28 prescribed by this article, such remedies and rights as may
29 now or hereafter exist in law in the case of mortgages or
30 deeds of trust on real property and security interests in
31 personal property. Such mortgage or deed of trust, upon its
32 recordation, shall have priority over all other liens or
33 encumbrances, however created or arising, on the property
34 covered by such mortgage or deed of trust, to the same
35 extent and for the same amount as if the municipality were
36 obligated to pay the full amount secured by such mortgage
37 or deed of trust immediately upon the recordation of such
38 mortgage or deed of trust and remained so obligated until
39 the obligations secured are fully discharged.

PART V. GRANTS, LOANS, ADVANCES AND AGREEMENTS; CUMULATIVE AUTHORITY.

§8-19-17. Grants, loans, advances and agreements.

1 As an alternative to, or in conjunction with, the issuance
2 of revenue bonds authorized by this article, any
3 municipality is hereby empowered and authorized to accept
4 loans or grants and procure loans or temporary advances

5 evidenced by notes or other negotiable instruments issued
6 in the manner, and subject to the privileges and limitations,
7 set forth with respect to bonds authorized to be issued
8 under the provisions of this article, or otherwise enter into
9 agreements, including, but not limited to, agreements of
10 indemnity, assurance or guarantee with respect to, and for
11 the purpose of financing part or all of, the cost of
12 acquisition, construction, establishment, extension or
13 equipment of waterworks systems and the construction of
14 additions, betterments and improvements to existing
15 waterworks systems or to existing electric power systems,
16 and for the other purposes herein authorized, from or with
17 any authorized agency of the state or from the United States
18 of America or any federal or public agency or department of
19 the United States or any private agency, corporation or
20 individual, which loans or temporary advances, including
21 the interest thereon, or the municipality's financial
22 obligations contained in such other agreements, which need
23 not bear interest, may be repaid out of the proceeds of bonds
24 authorized to be issued under the provisions of this article,
25 the revenues of or proceeds from the said waterworks
26 system or electric power system or grants to the
27 municipality from any agency of the state or from the
28 United States of America or any federal or public agency or
29 department of the United States or any private agency,
30 corporation or individual or from any combination of such
31 sources of payment, and may be secured in the manner
32 provided in sections eight, nine and sixteen of this article to
33 secure bonds issued under the provisions of this article, but
34 shall not otherwise be subject to the requirements of
35 sections eleven and twelve of this article, and to enter into
36 the necessary contracts and agreements to carry out the
37 purposes hereof with any agency of the state, the United
38 States of America or any federal or public agency or
39 department of the United States, or with any private
40 agency, corporation or individual.

41 In no event shall any such loan or temporary advance or
42 agreement be a general obligation of the municipality and
43 such loans or temporary advances or agreements, including
44 the interest thereon, shall be paid solely from the sources
45 specified in this section.

§8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

1 This article shall, without reference to any other statute
2 or charter provision, be deemed full authority for the
3 acquisition, construction, establishment, extension,
4 equipment, additions, betterment, improvement, repair,
5 maintenance and operation of or to a waterworks system or
6 for the construction of any additions, betterments,
7 improvements, repairs, maintenance or operation of or to
8 an existing electric power system as herein provided and for
9 the issuance and sale of the bonds or the alternative
10 methods of financing by this article authorized, and shall be
11 construed as an additional and alternative method therefor
12 and for the financing thereof, and no petition, referendum
13 or election or other or further proceeding with respect to
14 any such undertaking or to the issuance or sale of bonds or
15 the alternative methods of financing under the provisions of
16 this article and no publication of any resolution, ordinance,
17 notice or proceeding relating to any such undertaking or to
18 the issuance or sale of such bonds or the alternative
19 methods of financing shall be required, except as
20 prescribed by this article, any provisions of other statutes of
21 the state to the contrary notwithstanding: *Provided*, That
22 all functions, powers and duties of the state department of
23 health shall remain unaffected by this article.
24 This article shall be construed as cumulative authority
25 for any undertaking herein authorized, and shall not be
26 construed to repeal any existing laws with respect thereto.

CHAPTER 19

(S. B. 44—Originating in the Senate Committee on Finance)

[Passed May 22, 1986; in effect June 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact sections twenty and twenty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Public Employees Retirement System; voluntary retirement; deferred and early retirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-20. Voluntary retirement.

§5-10-21. Deferred retirement and early retirement.

§5-10-20. Voluntary retirement.

1 Any member who has attained or attains age sixty years
2 and has five or more years of credited service in force, at
3 least one year of which he was a contributing member of the
4 retirement system, may retire upon his written application
5 filed with the board of trustees setting forth at what time,
6 not less than thirty days nor more than ninety days
7 subsequent to the execution and filing thereof he desires to
8 be retired: *Provided*, That on and after the first day of June,
9 one thousand nine hundred eighty-six, any person who
10 becomes a new member of this retirement system shall, in
11 qualifying for retirement hereunder, have five or more
12 years of service, all of which years shall be actual,
13 contributory ones. Upon retirement, the member shall
14 receive an annuity provided for in section twenty-two of
15 this article.

§5-10-21. Deferred retirement and early retirement.

1 (a) Any member, who has five or more years of credited
2 service in force, of which at least three years are
3 contributing service, and who leaves the employ of a
4 participating public employer prior to his attainment of age
5 sixty years, for any reason except his disability retirement
6 or death, shall be entitled to an annuity computed
7 according to section twenty-two of this article, as the said
8 section was in force as of the date of his said separation from
9 the employ of a participating public employer: *Provided*,
10 That he does not withdraw his accumulated contributions
11 from the members' deposit fund. His said annuity shall
12 begin the first day of the calendar month next following the
13 month in which his application for same is filed with the
14 board of trustees on or after his attainment of age sixty-two
15 years.

16 (b) Any member who qualifies for deferred retirement
17 benefits in accordance with subsection (a) of this section,
18 and has ten or more years of credited service in force and
19 who has attained age fifty-five as of the date of his
20 separation may, prior to the effective date of his retirement,
21 but not thereafter, elect to receive the actuarial equivalent
22 of his deferred retirement annuity as a reduced annuity
23 commencing on the first day of any calendar month
24 between his date of separation and his attainment of age
25 sixty-two years and payable throughout his life.

26 (c) Any member who qualifies for deferred retirement
27 benefits in accordance with subsection (a) of this section,
28 and has twenty or more years of credited service in force,
29 may elect to receive the actuarial equivalent of his deferred
30 retirement annuity as a reduced annuity commencing on
31 the first day of any calendar month between his fifty-fifth
32 birthday and his attainment of age sixty-two years and
33 payable throughout his life.

34 (d) Notwithstanding any of the other provisions of this
35 section or of this article and pursuant to regulations
36 promulgated by the board, any member who has thirty or
37 more years of credited service in force, at least three of
38 which are contributing service, and who elects to take early
39 retirement, which for the purposes of this subsection shall
40 mean retirement prior to age sixty, whether an active
41 employee or a separated employee at the time of
42 application, shall be entitled to the full computation of
43 annuity according to section twenty-two of this article, as
44 the said section was in force as of the date of retirement
45 application, but with the reduced actuarial equivalent of
46 the annuity the member would have received if his benefit
47 had commenced at age sixty when he would have been
48 entitled to full computation of benefit without any
49 reduction.

50 (e) Notwithstanding any of the other provisions of this
51 section or of this article, any member of the retirement
52 system may retire with full pension rights, without
53 reduction of benefits, if such member is at least fifty-five
54 years of age and the sum of his or her age plus years of
55 contributing service equals or exceeds eighty.

CHAPTER 20

(S. B. 9—By Mr. Tonkovich, Mr. President, by request, and Senator Harman)

[Passed May 21, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scheduling agencies for termination pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall
2 be terminated on the date indicated but no governmental
3 entity or program shall be terminated under this article
4 unless a performance audit has been conducted of such
5 entity or program, except as authorized under section
6 fourteen of this article:

7 (1) On the first day of July, one thousand nine hundred
8 eighty-one: Judicial council of West Virginia; geological
9 and economic survey commission; motor vehicle certificate
10 appeal board; child welfare licensing board.

11 (2) On the first day of July, one thousand nine hundred
12 eighty-two: Ohio River basin commission; commission on
13 postmortem examination; state commission on manpower,
14 training and technology.

15 (3) On the first day of July, one thousand nine hundred
16 eighty-three: Anatomical board; economic opportunity
17 advisory committee; community development authority
18 board.

19 (4) On the first day of July, one thousand nine hundred
20 eighty-four: The following programs of the department of
21 natural resources: Rabies control, work incentive program;
22 West Virginia alcoholic beverage control licensing advisory
23 board.

24 (5) On the first day of July, one thousand nine hundred

25 eighty-five: Beautification commission; labor management
26 advisory council.

27 (6) On the first day of July, one thousand nine hundred
28 eighty-six: Health resources advisory council.

29 (7) On the first day of July, one thousand nine hundred
30 eighty-seven: The geological and economic survey; the
31 commission on uniform state laws; West Virginia health
32 care cost review authority; department of labor; civil
33 service commission advisory board; council of finance and
34 administration; motorcycle safety standards and
35 specifications board; oil and gas inspectors' examining
36 board; division of archives and history, department of
37 culture and history; and the public employees insurance
38 board.

39 (8) On the first day of July, one thousand nine hundred
40 eighty-eight: Veteran's council; labor management
41 relations board; board of investments; records management
42 and preservation advisory committee; minimum wage rate
43 board; Ohio River valley water sanitation commission;
44 southern regional education board; department of
45 corrections; board of regents; commission on mass
46 transportation.

47 (9) On the first day of July, one thousand nine hundred
48 eighty-nine: Mental retardation advisory committee;
49 interagency committee on pesticides; commission on
50 charitable organizations; board of school finance; veteran's
51 affairs advisory council; emergency medical services
52 advisory council; pesticides board of review; reclamation
53 commission; information system advisory commission;
54 board of social work examiners.

55 (10) On the first day of July, one thousand nine hundred
56 ninety: Consumer affairs advisory council; savings and loan
57 association; forest industries industrial foundation; U.S.
58 geological survey program within the department of
59 natural resources; drivers' license advisory board; the
60 following divisions or programs of the department of
61 agriculture: Soil conservation committee, rural resource
62 division, meat inspection program; women's commission;
63 office of workers' compensation commissioner.

64 (11) On the first day of July, one thousand nine hundred
65 ninety-one: State advisory council of the department of
66 employment security; department of human services; oil

67 and gas conservation commission.
68 (12) On the first day of July, one thousand nine hundred
69 ninety-two: State water resources board; water resources
70 division, department of natural resources; state board of
71 risk and insurance management; West Virginia's
72 membership in the interstate commission on the Potomac
73 River basin; board of banking and financial institutions;
74 state building commission; the capitol building and
75 grounds preservation commission; the public service
76 commission: *Provided*, That in the case of the public service
77 commission, the performance and fiscal audit required by
78 this article shall be completed and transmitted to the joint
79 committee on government and finance on or before the first
80 day of July, one thousand nine hundred ninety-one, in order
81 that the joint committee or its designated subcommittee
82 may review the audit pursuant to the provisions of section
83 one, article one, chapter twenty-four of this code.

CHAPTER 21

(Com. Sub. for S. B. 4—By Mr. Tonkovich, Mr. President, by request, and
Senator Harman)

[Passed May 22, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to repeal article eleven-e, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five, six, seven, eight, ten, eleven, twelve, thirteen, fifteen, seventeen, eighteen and eighteen-a, article ten, chapter eleven of said code; to further amend said article ten by adding thereto thirty-two new sections, designated sections five-a, five-b, five-c, five-d, five-e, five-f, five-g, five-h, five-i, five-j, five-k, five-l, five-m, five-n, five-o, five-p, five-q, five-r, seven-a, nine-a, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i, thirteen-j, thirteen-k and seventeen-a; to amend and reenact sections one, two, three, four and five, article twelve, chapter eleven of said code; to further amend said article twelve by adding thereto eight new sections, designated sections nineteen, twenty, twenty-one, twenty-two, twenty-three,

twenty-four, twenty-five and twenty-six; and to further amend chapter eleven of said code by adding thereto a new article, designated article ten-b, all relating generally to the "West Virginia Combined Amnesty and Tax Compliance Act of 1986" for taxes administered under the "West Virginia Tax Procedure and Administration Act"; providing for tax commissioner to: Administer and enforce taxes administered under the "West Virginia Tax Procedure and Administration Act," issue forms, make investigations, administer oath, issue subpoena and subpoena duces tecum providing rules for service thereof, payment of fees and enforcement or quashing thereof, make returns for nonfilers and for persons who file false or fraudulent returns, keep tax return and return information confidential except to the extent disclosure is authorized or permitted by law and imposing a misdemeanor criminal penalty for unlawful disclosure of returns and return information; authorizing and permitting disclosure of returns and return information under certain conditions and in certain circumstances; permitting tax commissioner to enter into written reciprocal exchange of information agreements with tax administrators from other jurisdictions who administer a similar tax; requiring that the tax commissioner release administrative decisions; providing rules for service of notices of assessments and administrative hearing decisions, for timely filing tax returns and other documents, for timely paying of taxes or any installment payment thereof and for timeliness when last day for performance of act falls on Saturday, Sunday or legal holiday; continuing vestment in tax commissioner of exclusive jurisdiction to enforce the provisions of the "West Virginia Tax Procedure and Administration Act" and the tax laws administered under it in courts of this state, but allowing the tax commissioner to be represented in any such civil court enforcement proceeding by the attorney general, or the prosecuting attorney of the county in which the enforcement proceeding is to be brought or by a staff attorney permanently employed by the tax commissioner who shall be designated by the attorney general to be a special assistant attorney general, and specifying that in all other court proceedings on appeals of administrative decisions of the tax commissioner, the tax commissioner shall be represented by the attorney general;

giving certain employees designated by tax commissioner all lawful powers delegated to members of department of public safety to enforce the criminal provisions of any tax law administered under the provisions of the "West Virginia Tax Crimes and Penalties Act," except authority to carry firearms, and permitting the department of public safety, county sheriffs and their deputies and municipal police officers to assist in enforcement of such criminal provisions; permitting fractional parts of a cent to be rounded off if less than one half of one cent and rounded up if fractional part is one half of one cent or greater; providing for installment payments to be treated as payment on account for the tax for which they are made; permitting overpayment of installment payments to be refunded or credited after actual liability for taxable year is determined; providing for taxpayer who pays by check or money order to remain liable for payment if check or money order is dishonored; imposing liability for payment on financial institution that guarantees payment of a negotiable instrument that is subsequently dishonored by guarantor; imposing a money penalty equal to service charge a financial institution charges the state when a check or other negotiable instrument issued by a taxpayer is dishonored; requiring fiduciaries to timely give notice to tax commissioner of their fiduciary relationship to a taxpayer; providing for changes in tax laws administered under the "West Virginia Tax Procedure and Administration Act" to apply to a particular taxpayer for taxable years beginning on or after effective date of enactment making the change unless a specific effective date provision is provided within the enactment; authorizing tax commissioner to execute closing agreements that are final and conclusive, except for fraud, malfeasance or misrepresentation of material fact, and to compromise taxes if there is doubt as to liability or collectibility, with threshold amount specified below which the tax commissioner may proceed solely and independently and above which he is required, before undertaking compromise action, to seek and obtain the written recommendation of the attorney general and with such recommendation to be made a part of the compromise file in the office of the tax commissioner on such compromise matter; requiring record to be kept of all compromises, except when amount of taxes is less than one thousand

dollars, and quarterly reporting of compromises to Speaker of House of Delegates, President of Senate and legislative auditor; authorizing legislative auditor to audit all agreements and compromises, in their entirety; authorizing issuance of technical assistance advisories to taxpayers; requiring notice of mathematical or clerical error to be given to taxpayers including notice of deficiency or overpayment resulting therefrom; permitting collection without assessment of balance shown due on signed return filed without full remittance thereof, after written notice and demand to taxpayer for payment thereof; authorizing issuance of deficiency assessments and amended or supplemental assessments and providing rules for issuance thereof; authorizing issuance of jeopardy assessments when collection of tax believed to be in jeopardy; making jeopardy assessments immediately due and payable and providing for administrative hearing and judicial appeal procedures to apply only if amount of jeopardy assessment is remitted or other security acceptable to tax commissioner is posted within twenty days after issuance of jeopardy assessment and petition for reassessment, timely filed; providing for abatement of assessments and authorizing tax commissioner to abate small balances when administrative and collection costs do not warrant collection of small balance; providing that notice of assessment (except of jeopardy assessment) or of amended or supplemental assessment becomes final and not subject to administrative or judicial review sixty days after its service on the taxpayer, unless taxpayer timely files a petition for reassessment or pays the amount of the assessment; permitting taxpayer who timely petitions for reassessment to thereafter pay amount thereof and convert petition for reassessment to a petition for refund; providing for amount of an assessment (including an amended or supplemental assessment) that becomes final to become due and payable and collectible on the day after it becomes final; specifying contents of a petition for reassessment; providing optional small claims procedure for amounts in controversy of ten thousand dollars or less per year; providing that if taxpayer elects optional small claims procedure and tax commissioner concurs in such election, no judicial appeal of a small claims administrative decision is permitted; providing for judicial appeals of administrative hearing

decisions of tax commissioner, other than small claims decisions; specifying venue for appeal, contents of petition for appeal and method of service thereof on tax commissioner; requiring of appeal bond to be filed within ninety days after appeal filed, unless court sooner requires; providing that in lieu of cash or corporate surety bond, tax commissioner may accept other security or indemnification; providing for tax commissioner's administrative decision along with notice of assessment (including jeopardy, amended or supplemental assessment) to be prima facie evidence of tax due; requiring tax commissioner to correct his assessment in accordance with the order of the court; permitting either taxpayer or tax commissioner to appeal court's order to West Virginia supreme court of appeals; requiring tax commissioner to collect taxes, additions to tax, penalties and interest that are legally due and owing to the state, using remedies available to the state for collection of debts owed to it, including foreclosure of tax liens and levy and distraint; requiring persons who contract with a nonresident contractor to withhold six percent of the contract price until receipt of a certificate from tax commissioner that taxes owed by contractor have been paid or provided for; prohibiting dissolution or withdrawal of corporations until tax commissioner certifies to secretary of state that taxes owed by such corporation have been paid or provided for; requiring all state, county, district and municipal officers making contracts on behalf of their governmental entity to withhold final payment under such contract until after receipt from the tax commissioner that certain state taxes have been paid or provided for, and if transaction is also subject to municipal business and occupation taxes, a similar receipt is needed from municipality imposing the tax, and imposing a money penalty on person who fails to withhold such payment; limiting the effect of tax commissioner's certificate that tax has been paid or provided for; providing for payment of tax when person sells out or quits business, creating a lien for taxes on property of such business and creating successor liability unless transferor produces receipt from tax commissioner evidencing payment of such taxes; providing for taxes that are due and payable to be paid from money first available for distribution in receivership, bankruptcy

or other similar proceedings, and making fiduciary personally liable for failure to pay such taxes; authorizing circuit courts to enjoin persons and businesses from doing business unless and until taxpayer fully complies with this state's tax laws; providing for tax commissioner to recover his costs in collection or injunction proceedings; authorizing tax commissioner to offset refund due or credit established for a taxpayer against any final and conclusive liability of that taxpayer for taxes; providing for relief of liability for tax in certain cases; providing for tax liabilities that are final and conclusive to be a debt due this state and for amount thereof to be a personal obligation of taxpayer and lien against taxpayer's real and personal property, and with respect to such lien, providing for: Duration of lien, recordation of lien, release or subordination of lien, discharge of lien and procedures for foreclosure of lien; authorizing tax commissioner to levy and distraint upon property (real or personal, tangible and intangible) and rights to property for collection of delinquent taxes and, with respect thereto: Authorizing jeopardy levies when collection of the tax is in jeopardy, defining "levy," permitting successive seizures, authorizing issuance of distress warrants to county sheriffs and employees of the tax commissioner; specifying procedures with respect thereto; requiring preseizure notice to taxpayer of intent to levy, except in case of jeopardy levy; requiring postseizure notice to taxpayer of property levied upon; providing for levy on salary and wages to be continuous until levy is satisfied; exempting certain property, salary, wages and income from levy; requiring surrender of property subject to levy; imposing personal liability and money penalty on persons in possession of property or rights to property subject to levy who refuse or fail to surrender such property or rights to property; exonerating person in possession of property or rights to property who surrender the same to the tax commissioner from liability to delinquent taxpayer with respect to surrendered property; requiring that notice of sale be given to the owner of seized property, specifying date, time and place of sale and that such notice be published as a Class II legal advertisement along with description of property to be sold; authorizing tax commissioner to fix a minimum selling price for such property; providing that

upon sale of indivisible property, the proceeds of sale be divided and that attributable to the ownership interest of innocent co-owners or joint-owners be turned over to them, but that such innocent co-owner or joint-owner can seek relief by petition to circuit court for postponement of sale pending determination of divisibility of the property and certain other affordable relief; providing for sale of perishable goods; permitting redemption of property by owner or owners thereof prior to sale; permitting redemption of real property within one hundred eighty days after sale thereof, by any owner, his heirs, executors or administrators, or by any person having an interest in the real property; providing for person redeeming property of another to be subrogated to lien of the state on such interest, and for such lien to expire unless perfected; providing for issuance of certificates of sale and deeds to real property; specifying the legal effect of such documents, with issuance thereof to discharge junior encumbrances; requiring tax commissioner to keep records of sales of real property and redemptions thereof; providing for expenses of levy and sale to be recovered out of proceeds thereof; specifying how proceeds of sale are to be applied; authorizing tax commissioner to release levy and return property to facilitate collections or when property was wrongfully levied upon; requiring state to pay interest on money wrongfully levied upon and on proceeds of sale from property wrongfully seized; prescribing statute of limitations on issuance of assessments (including jeopardy, amended and supplemental assessments), exceptions thereto and for suspension of limitations on assessments and collections during pendency of bankruptcy proceeding; requiring interest to be paid on underpayments and overpayments of tax; providing rules for application, calculation and payment of such interest and specifying exceptions to payment of interest; providing for the rate of interest to be not less than eight percent beginning July first, one thousand nine hundred eighty-six, and thereafter, with such rate of interest to be determined semiannually by the tax commissioner in accordance with rules specified for determining rate of interest; imposing additions to tax for failure of taxpayer to timely file returns or pay tax and authorizing waiver thereof when tax commissioner finds

such failure was due to reasonable cause and not due to willful neglect; imposing additions to tax for negligence or intentional disregard of rules and regulations of tax commissioner, with prior notice, stating reasons of tax commissioner for such imposition; imposing additions to tax for filing of a false or fraudulent return with intent to evade tax and providing an innocent spouse exception; imposing additions to tax for failure to pay estimated tax; providing rules for computation of the amount thereof and safety zones which if applicable to a taxpayer bar imposition of this addition to tax; defining terms and providing internal effective dates; providing for a one-time only tax penalty and additions to tax amnesty program to be conducted by the tax commissioner during a three-month consecutive period in calendar year one thousand nine hundred eighty-six; defining terms; prescribing general rules for duration and conduct of amnesty program, eligibility for amnesty, legal effect of amnesty and disposition of revenues collected; providing a new short title for the business registration tax, and as to such tax, defining terms, requiring all persons engaging in or prosecuting business in this state to have registration certificate with additional certificate required for each additional business location and for conduct of certain businesses; imposing a fifteen dollar tax for each certificate; exempting certain persons from payment of the tax and from requirement to have a certificate; providing that registration certificate shall not validate an illegal activity or exonerate any person from any penalty for engaging in such illegal activity; providing that filing of application for a business registration certificate to not be construed as consent of business to general tax jurisdiction of this state; retaining for the benefit of municipalities the power to impose certain license taxes which had been imposed by the state prior to enactment of the business franchise registration tax in the year one thousand nine hundred seventy, and limiting the amount of such municipal license tax rates to those state rates then in effect; specifying time for which certificate is granted; authorizing tax commissioner to suspend or cancel certificate; specifying grounds and procedures therefor; empowering tax commissioner to not renew certificate of delinquent taxpayers; requiring persons engaged in any contracting

business or activity to have available a copy of their certificate at the job site; defining terms; imposing penalty for failure to have certificate available; requiring registration of transient vendors; defining terms; requiring transient vendors to post a bond and give tax commissioner written notices of the dates, times and places transient vendor will be in this state selling goods or wares; authorizing revocation of such certificate for certain failures of transient vendor and for providing false information to tax commissioner; authorizing seizure of property of unregistered transient vendor and of registered transient vendors who do not publicly display their registration certificate; declaring such seized property to be contraband forfeited to the state; providing for sale and redemption of such property; providing a severability clause; and providing rules for construction of the business registration tax.

Be it enacted by the Legislature of West Virginia:

That article eleven-e, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections five, six, seven, eight, ten, eleven, twelve, thirteen, fifteen, seventeen, eighteen and eighteen-a, article ten, chapter eleven of said code be amended and reenacted; that article ten of said chapter eleven be further amended by adding thereto thirty-two new sections, designated sections five-a, five-b, five-c, five-d, five-e, five-f, five-g, five-h, five-i, five-j, five-k, five-l, five-m, five-n, five-o, five-p, five-q, five-r, seven-a, nine-a, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i, thirteen-j, thirteen-k and seventeen-a; that sections one, two, three, four and five, article twelve of said chapter eleven be amended and reenacted; that article twelve of said chapter eleven be further amended by adding thereto eight new sections, designated sections nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six; and that said chapter eleven be further amended by adding thereto a new article, designated article ten-b, all to read as follow:

Article

- 10. Procedure and Administration.
- 10B. Tax Penalty and Additions to Tax Amnesty.
- 12. Business Registration tax.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

- §11-10-5. General power; regulations and forms.
- §11-10-5a. Investigations.
- §11-10-5b. Subpoena and subpoena duces tecum.
- §11-10-5c. Returns by tax commissioner.
- §11-10-5d. Confidentiality and disclosure of returns and return information.
- §11-10-5e. Service of notice.
- §11-10-5f. Timely filing and paying.
- §11-10-5g. Time for performance of acts where last day falls on Saturday,
Sunday or legal holiday.
- §11-10-5h. Enforcement proceedings.
- §11-10-5i. Enforcement powers.
- §11-10-5j. Liability for taxes withheld or collected.
- §11-10-5k. Fractional parts of a cent.
- §11-10-5l. Payment of estimated tax.
- §11-10-5m. Overpayment of installments.
- §11-10-5n. Payment by check or money order.
- §11-10-5o. Notice of fiduciary relationship.
- §11-10-5p. Effective date of amendments.
- §11-10-5q. Settlement agreements and compromises.
- §11-10-5r. Technical assistance advisories.
- §11-10-6. Mathematical or clerical errors; collection of balance due on return
without remittance.
- §11-10-7. Assessment.
- §11-10-7a. Abatement.
- §11-10-8. Notice of assessment; petition for reassessment or payment of
assessment within sixty days; finality of assessment; payment
of final assessment; effective date.
- §11-10-9a. Small claims procedure; disputes involving \$10,000 or less.
- §11-10-10. Appeals.
- §11-10-11. Collection of tax.
- §11-10-12. Liens; release; subordination; foreclosure.
- §11-10-13. Levy and distraint.
- §11-10-13a. Property exempt from levy.
- §11-10-13b. Surrender of property subject to levy.
- §11-10-13c. Sale of seized property.
- §11-10-13d. Sale of perishable goods.
- §11-10-13e. Redemption of property.
- §11-10-13f. Certificate of sale; deed to real property.
- §11-10-13g. Legal effect of certificate of sale of personal property and deed of
real property.
- §11-10-13h. Records of sale.
- §11-10-13i. Expense of levy and sale.
- §11-10-13j. Application of proceeds of levy.
- §11-10-13k. Authority to release levy and return property.
- §11-10-15. Limitations on assessment.
- §11-10-17. Interest.
- §11-10-17a. Determination of rate of interest.
- §11-10-18. Additions to tax.
- §11-10-18a. Additions to tax for failure to pay estimated tax.

§11-10-5. General power; regulations and forms.

1 The tax commissioner shall administer and enforce each
2 tax to which this article applies and, in connection
3 therewith, shall prescribe all necessary forms. The tax
4 commissioner may make all needful rules and regulations
5 for the taxes to which this article applies as provided in
6 the state administrative procedures act in chapter twenty-
7 nine-a of this code: *Provided*, That all rules and regulations
8 of the tax commissioner presently in effect on the effective
9 date of this article shall remain in full force and effect until
10 amended or repealed by the tax commissioner in the
11 manner prescribed by law.

§11-10-5a. Investigations.

1 For the purpose of ascertaining the correctness of any tax
2 return or assessment and for the purpose of making an
3 estimate of any taxpayer's liability for tax administered
4 under this article, and for the further purpose of conducting
5 the hearings provided for in section nine or nine-a of this
6 article, the tax commissioner shall have the power to
7 examine or cause to be examined, by any agent or
8 representative designated by the tax commissioner, any
9 books, papers, records, memoranda, inventory or
10 equipment bearing upon the matters required to be
11 included in the tax return, may make test checks of tax
12 yield, and may require the attendance of the person
13 rendering the tax return or the attendance of any other
14 person having knowledge of the matters contained therein
15 and may take testimony and may require material proof
16 with power to administer oath to such person or persons.

§11-10-5b. Subpoena and subpoena duces tecum.

1 (a) *Power to issue.* — For the efficient administration of
2 the powers vested in the tax commissioner by the preceding
3 section, and to facilitate determination or collection of any
4 tax under this article, the tax commissioner, or his delegate,
5 shall have the power to issue subpoenas and subpoenas
6 duces tecum, in the name of the state tax department, and
7 compel the attendance of witnesses and the production of
8 books, papers, records, documents and testimony at the
9 time and place specified. The tax commissioner, or his
10 delegate, may exercise such power, in the name of the state
11 tax department, upon request of any person who is a party

12 in any hearing to be held under the provisions of this article,
13 for purposes of such hearing.

14 (b) *Service.* — Every such subpoena and subpoena
15 duces tecum shall be served at least five days before the
16 return date thereof, by either personal service made by any
17 person over eighteen years of age, or by registered or
18 certified mail, but a return receipt signed by the person to
19 whom subpoena or subpoena duces tecum is directed shall
20 be required to prove service by registered or certified mail.
21 Any party requesting a subpoena or subpoena duces tecum
22 is responsible for service thereof and payment of any fee for
23 such service. Service of other subpoenas and subpoenas
24 duces tecum shall be the responsibility of the tax
25 commissioner or his delegate. Any person, except a person
26 in the employ of the state tax department, or any party, who
27 serves any such subpoena or subpoena duces tecum shall be
28 entitled to the same fee as sheriffs who serve witness
29 subpoenas for the circuit courts of this state.

30 (c) *Fees.* — Fees for the attendance of witnesses
31 subpoenaed shall be the same as for witnesses before the
32 circuit courts of this state. All such fees shall be paid by the
33 tax commissioner if the subpoena or subpoena duces tecum
34 was issued, without the request of an interested party, at the
35 insistence of the state tax department. All such fees related
36 to any subpoena or subpoena duces tecum issued at the
37 request of a party to an administrative hearing shall be paid
38 by the party who asked that such subpoena or subpoena
39 duces tecum be issued. All requests by interested parties for
40 issuance of subpoena or subpoena duces tecum shall be in
41 writing and shall contain a statement acknowledging that
42 the requesting party agrees to pay such fees.

43 (d) *Motion to quash.* — Upon motion made promptly,
44 and in any event before the time specified in a subpoena or
45 subpoena duces tecum for compliance therewith, the circuit
46 court of the county in which the hearing is to be held or the
47 circuit court of the county in which the person upon whom
48 any such subpoena or subpoena duces tecum was served
49 resides, has his or its principal place of business or is
50 employed, or the circuit court of the county in which any
51 such subpoena or subpoena duces tecum was served, or the
52 judge of any such circuit court in vacation, may grant any

53 relief with respect to any such subpoena or subpoena duces
54 tecum which any such circuit court, under the "West
55 Virginia Rules of Civil Procedure for Trial Courts of
56 Record," could grant, and for any of the same reasons, with
57 respect to any such subpoena or subpoena duces tecum
58 issued from any such circuit court.

59 (e) *Enforcement of compliance.* — In case of
60 disobedience or neglect of any subpoena or subpoena duces
61 tecum served on any person, or the refusal of any witness to
62 testify to any matter regarding which he may be lawfully
63 interrogated, the circuit court of the county in which the
64 hearing is being held, or the circuit court of Kanawha
65 County or of the county in which such person resides, has
66 his or its principal place of business or is employed, or the
67 judge thereof in vacation, upon application by the tax
68 commissioner, shall compel obedience by attachment
69 proceedings for contempt as in the case of disobedience of
70 the requirements of a subpoena or subpoena duces tecum
71 issued from such circuit court for a refusal to testify therein.

72 (f) *Testimony under oath.* — Witnesses subpoenaed
73 under this section shall testify under oath or affirmation.

§11-10-5c. Returns by tax commissioner.

1 If any person fails to file any return required by this
2 article or any article administered by this article, at the time
3 required by law or by regulation made under authority of
4 law, or makes and files willfully or otherwise, a false or
5 fraudulent return, the tax commissioner may proceed to
6 make such return from any information available to him,
7 whether obtained through testimony or otherwise.

§11-10-5d. Confidentiality and disclosure of returns and return information.

1 (a) *General rule.* — Except when required in an official
2 investigation by the tax commissioner into the amount of
3 tax due under any article administered under this article or
4 in any proceeding in which the tax commissioner is a party
5 before a court of competent jurisdiction to collect or
6 ascertain the amount of such tax and except as provided in
7 subsections (d) through (m), it shall be unlawful for any
8 officer or employee of this state to divulge or make known in
9 any manner the tax return, or any part thereof, of any

10 person or disclose information concerning the personal
11 affairs of any individual or the business of any single firm or
12 corporation, or disclose the amount of income, or any
13 particulars set forth or disclosed in any report, declaration
14 or return required to be filed with the tax commissioner by
15 any article of this chapter imposing any tax administered
16 under this article or by any rule or regulation of the tax
17 commissioner issued thereunder, or disclosed in any audit
18 or investigation conducted under this article.

19 (b) *Definitions.* — For purposes of this section:

20 (1) *Background file document.* — The term
21 “background file document,” with respect to a written
22 determination, includes the request for that written
23 determination, any written material submitted in support
24 of the request and any communication (written or
25 otherwise) between the state tax department and person
26 outside the state tax department in connection with the
27 written determination received before issuance of the
28 written determination.

29 (2) *Disclosure.* — The term “disclosure” means the
30 making known to any person in any manner whatsoever a
31 return or return information.

32 (3) *Inspection.* — The terms “inspection” and
33 “inspected” mean any examination of a return or return
34 information.

35 (4) *Return.* — The term “return” means any tax or
36 information return or report, declaration of estimated tax,
37 claim or petition for refund or credit, or petition for
38 reassessment that is required by, or provided for, or
39 permitted, under the provisions of this article (or any article
40 of this chapter administered under this article) which is
41 filed with the tax commissioner by, on behalf of, or with
42 respect to any person, and any amendment or supplement
43 thereto, including supporting schedules, attachments, or
44 lists which are supplemental to, or part of, the return so
45 filed.

46 (5) *Return information.* — The term “return
47 information” means:

48 (A) A taxpayer's identity; the nature, source or amount
49 of his income, payments, receipts, deductions, exemptions,
50 credits, assets, liabilities, net worth, tax liability, tax
51 withheld, deficiencies, over assessments, or tax payments,

52 whether the taxpayer's return was, is being, or will be
53 examined or subject to other investigation or processing, or
54 any other data received by, recorded by, prepared by,
55 furnished to, or collected by the tax commissioner with
56 respect to a return or with respect to the determination of
57 the existence, or possible existence, of liability (or the
58 amount thereof) or by any person under the provisions of
59 this article (or any article of this chapter administered
60 under this article) for any tax, additions to tax, penalty,
61 interest, fine, forfeiture, or other imposition, or offense; and

62 (B) Any part of any written determination or any
63 background file document relating to such written
64 determination. "Return information" does not include,
65 however, data in a form which cannot be associated with, or
66 otherwise identify, directly or indirectly, a particular
67 taxpayer. Nothing in the preceding sentence, or in any other
68 provision of this code, shall be construed to require the
69 disclosure of standards used or to be used for the selection
70 of returns for examination, or data used or to be used for
71 determining such standards.

72 (6) *Tax administration.* — The term "tax
73 administration" means:

74 (A) The administration, management, conduct,
75 direction and supervision of the execution and application
76 of the tax laws or related statutes of this state, and the
77 development and formulation of state tax policy relating to
78 existing or proposed state tax laws, and related statutes of
79 this state, and

80 (B) Includes assessment, collection, enforcement,
81 litigation, publication and statistical gathering functions
82 under the laws of this state.

83 (7) *Taxpayer identity.* — The term "taxpayer identity"
84 means the name of a person with respect to whom a return is
85 filed, his mailing address, his taxpayer identifying number,
86 or a combination thereof.

87 (8) *Taxpayer return information.* — The term "taxpayer
88 return information" means return information as defined in
89 paragraph (5), above, which is filed with, or furnished to,
90 the tax commissioner by or on behalf of the taxpayer to
91 whom such return information relates.

92 (9) *Written determination.* — The term "written
93 determination" means a ruling, determination letter,
94 technical advice memorandum or letter or administrative

95 decision issued by the tax commissioner.

96 (c) *Criminal penalty.* — Any officer or employee (or
97 former officer or employee) of this state who violates this
98 section shall be guilty of a misdemeanor, and, upon
99 conviction thereof, shall be fined not more than one
100 thousand dollars or imprisoned for not more than one year,
101 or both, together with costs of prosecution.

102 (d) *Disclosure to designee of taxpayer.* — Any person
103 protected by the provisions of this article may, in writing,
104 waive the secrecy provisions of this section for such purpose
105 and such period as he shall therein state. The tax
106 commissioner may, subject to such requirements and
107 conditions as he may prescribe, thereupon release to
108 designated recipients such taxpayer's return or other
109 particulars filed under the provisions of the tax articles
110 administered under the provisions of this article, but only to
111 the extent necessary to comply with a request for
112 information or assistance made by the taxpayer to such
113 other person. However, return information shall not be
114 disclosed to such person or persons if the tax commissioner
115 determines that such disclosure would seriously impair
116 administration of this state's tax laws.

117 (e) *Disclosure of returns and return information for use*
118 *in criminal investigations.*

119 (1) *In general.* — Except as provided in subdivision (3),
120 any return or return information with respect to any
121 specified taxable period or periods shall, pursuant to and
122 upon the grant of an ex parte order by a federal district
123 court judge, federal magistrate or circuit court judge of this
124 state, under subdivision (2), be open (but only to the
125 extent necessary as provided in such order) to inspection
126 by, or disclosure to, officers and employees of any federal
127 agency, or of any agency of this state, who are personally
128 and directly engaged in:

129 (A) Preparation for any judicial or administrative
130 proceeding pertaining to the enforcement of a specifically
131 designated state or federal criminal statute to which this
132 state, the United States or such agency is or may be a party;

133 (B) Any investigation which may result in such a
134 proceeding; or

135 (C) Any state or federal grand jury proceeding
136 pertaining to enforcement of such a criminal statute to

137 which this state, the United States or such agency is or may
138 be a party.

139 Such inspection or disclosure shall be solely for the use of
140 such officers and employees in such preparation,
141 investigation, or grand jury proceeding.

142 (2) *Application of order.* — Any United States attorney,
143 any special prosecutor appointed under Section 593 of Title
144 28, United States Code, or any attorney in charge of a
145 United States justice department criminal division
146 organized crime strike force established pursuant to
147 Section 510 of Title 28, United States Code, may authorize
148 an application to a circuit court judge or magistrate, as
149 appropriate, for the order referred to in subdivision (1). Any
150 prosecuting attorney of this state may authorize an
151 application to a circuit court judge of this state for the order
152 referred to in subdivision (1). Upon such application, such
153 judge or magistrate may grant such order if he determines
154 on the basis of the facts submitted by the applicant that:

155 (A) There is reasonable cause to believe, based upon
156 information believed to be reliable, that a specific criminal
157 act has been committed;

158 (B) There is reasonable cause to believe that the return
159 or return information is or may be relevant to a matter
160 relating to the commission of such act; and

161 (C) The return or return information is sought
162 exclusively for use in a state or federal criminal
163 investigation or proceeding concerning such act, and the
164 information sought to be disclosed cannot reasonably be
165 obtained, under the circumstances, from another source.

166 (3) The tax commissioner shall not disclose any return
167 or return information under subdivision (1) if he
168 determines and certifies to the court that such disclosure
169 would identify a confidential informant or seriously
170 impair a civil or criminal tax investigation.

171 (f) *Disclosure to person having a material interest.* —
172 The tax commissioner may, pursuant to legislative
173 regulations promulgated by him, and upon such terms as he
174 may require, disclose a return or return information to a
175 person having a material interest therein: *Provided*, That
176 such disclosure shall only be made if the tax commissioner
177 determines, in his discretion, that such disclosure would not
178 seriously impair administration of this state's tax laws.

179 (g) *Statistical use.* — This section shall not be construed

180 to prohibit the publication or release of statistics so
181 classified as to prevent the identification of particular
182 returns and the items thereof.

183 (h) *Disclosure of amount of outstanding lien.* — If notice
184 of lien has been recorded pursuant to section twelve of this
185 article, the amount of the outstanding obligation secured by
186 such lien may be disclosed to any person who furnishes
187 written evidence satisfactory to the tax commissioner that
188 such person has a right in the property subject to such lien
189 or intends to obtain a right in such property.

190 (i) *Reciprocal exchange.* — The tax commissioner may,
191 pursuant to written agreement, permit the proper officer of
192 the United States, or the District of Columbia or any other
193 state, or any political subdivision of this state, or his
194 authorized representative, who is charged by law with
195 responsibility for administration of a similar tax, to inspect
196 reports, declarations or returns filed with the tax
197 commissioner or may furnish to such officer or
198 representative a copy of any such document provided such
199 other jurisdiction grants substantially similar privileges to
200 the tax commissioner or to the attorney general of this state.
201 Such disclosure shall be only for the purpose of, and only to
202 the extent necessary in, the administration of tax laws:
203 *Provided,* That such information shall not be disclosed to
204 the extent that the tax commissioner determines that such
205 disclosure would identify a confidential informant or
206 seriously impair any civil or criminal tax investigation.

207 (j) *Inspection of business and occupation tax returns by*
208 *municipalities.* — The tax commissioner shall, upon the
209 written request of the mayor of any West Virginia
210 municipality having a business and occupation tax or
211 privilege tax, allow the duly authorized agent of such
212 municipality to inspect and make copies of the state
213 business and occupation tax return filed by taxpayers of
214 such municipality. Such inspection or copying shall only be
215 for the purpose of securing information for municipal tax
216 purposes and shall only be allowed if such municipality
217 allows the tax commissioner the right to inspect or make
218 copies of the municipal business and occupation tax returns
219 of such municipality.

220 (k) *Release of administrative decisions.* — The tax
221 commissioner shall release to the public his administrative
222 decisions, or a summary thereof: *Provided,* That unless the

223 taxpayer appeals the administrative decision to circuit
224 court or waives in writing his rights to confidentiality, any
225 identifying characteristics or facts about the taxpayer shall
226 be omitted or modified to such an extent so as to not disclose
227 the name or identity of the taxpayer.

228 (l) *Release of taxpayer information.*

229 (1) If the tax commissioner believes that enforcement of
230 the tax laws administered under this article will be
231 facilitated and enhanced thereby, he shall disclose, upon
232 request, the names and address of persons:

233 (A) Who have a current business registration certificate.

234 (B) Who are licensed employment agencies.

235 (C) Who are licensed collection agencies.

236 (D) Who are licensed to sell drug paraphernalia.

237 (E) Who are distributors of gasoline or special fuel.

238 (F) Who are contractors.

239 (G) Who are transient vendors.

240 (H) Who are authorized by law to issue a sales or use tax
241 exemption certificate.

242 (I) Who are required by law to collect sales or use taxes.

243 (J) Who are foreign vendors authorized to collect use
244 tax.

245 (K) Whose business registration certificate has been
246 suspended or canceled or not renewed by the tax
247 commissioner.

248 (L) Against whom a tax lien has been recorded under
249 section twelve of this article (including any particulars
250 stated in the recorded lien).

251 (M) Against whom criminal warrants have been issued
252 for a criminal violation of this state's tax laws.

253 (N) Who have been convicted of a criminal violation of
254 this state's tax laws.

255 (m) *Disclosure of return information to office of child
256 advocate.*

257 (1) *State return information.* — The tax commissioner
258 may, upon written request, disclose to the director of the
259 office of child advocate created by article two, chapter
260 forty-eight-a of this code:

261 (A) Available return information from the master files
262 of the tax department relating to the social security account
263 number, address, filing status, amounts and nature of
264 income, and the number of dependents reported on any

265 return filed by or with respect to, any individual with
266 respect to whom child support obligations are sought to be
267 enforced, and

268 (B) Available state return information reflected on any
269 state return filed by, or with respect to any individual
270 described in subparagraph (A), relating to the amount of
271 such individual's gross income, but only if such information
272 is not reasonably available from any other source.

273 (2) *Restrictions on disclosure.* — The tax commissioner
274 shall disclose return information under subdivision (1)
275 only for purposes of, and to the extent necessary in,
276 collecting child support obligations from, and locating
277 individuals owing such obligations.

§11-10-5e. Service of notice.

1 Notices of assessments and administrative decisions shall
2 be served upon the taxpayer either by personal or
3 substituted service or by certified mail. Service of notice by
4 personal or substituted service shall be valid if made by any
5 method authorized by Rule 4 of the West Virginia Rules of
6 Civil Procedure. Service of notice by certified mail shall be
7 valid if accepted by the taxpayer, or if addressed to and
8 mailed to the taxpayer's usual place of business or usual
9 place of abode or last known address and accepted by any
10 officer, partner, employee, spouse or child of the taxpayer
11 over the age of eighteen. Any notice addressed and mailed in
12 the above manner and accepted by any person, shall be
13 presumed to be accepted by such person unless proven
14 otherwise by the taxpayer. Any notice addressed and
15 mailed in the above manner, and which is refused or not
16 claimed, may then be served by regular mail if such notice is
17 subsequently mailed by first class mail, postage prepaid, to
18 the same address; and date of posting in the United States
19 mail shall be the date of service.

§11-10-5f. Timely filing and paying.

1 (a) *Delivery in person.* — If any return, claim, statement
2 or other document required to be filed, or any payment
3 required to be made within a prescribed period or on or
4 before a prescribed date, is delivered in person on or before
5 such date to the tax commissioner, or the appropriate
6 division or officer of the tax department, at Charleston,
7 West Virginia, during normal business hours of the tax

8 department, it shall be timely filed: *Provided*, That the tax
9 commissioner may authorize such delivery to be made to his
10 agent at such other location or locations in this state, as he
11 may from time to time prescribe.

12 (b) *Timely mailing*. — If any return, claim, statement or
13 other document, required to be filed, or any payment
14 required to be made within a prescribed period or on or
15 before a prescribed date under authority of this article or
16 the provisions of any article of this chapter imposing any
17 tax administered under this article, is, after such period or
18 such date, delivered by United States mail to the tax
19 commissioner or the state tax department, the date of the
20 United States postmark stamped on the cover in which such
21 return, claim, statement, or other document or payment is
22 mailed shall be deemed to be the date of delivery or the date
23 of payment, as the case may be, provided the following
24 mailing requirements are met:

25 (1) The postmark date falls within the prescribed period
26 or on or before the prescribed date for filing (including any
27 extension granted for such filing) of the return, claim,
28 statement or other document, or for making the payment
29 (including any extension granted for such payment); and

30 (2) The return, claim, statement, other document or
31 payment was, within the time prescribed in subparagraph
32 (1), deposited in the mail in the United States in an envelope
33 or other appropriate wrapper, postage prepaid, properly
34 addressed to the tax commissioner or the state tax
35 department.

36 (c) *Postmarks*. — This section shall apply in the case of
37 postmarks not made by the United States postal service
38 only if and to the extent provided by rules or regulations
39 prescribed by the tax commissioner.

40 (d) *Registered and certified mailing*. — For purposes of
41 this section, if any return, claim, statement, or other
42 document or payment is sent by United States registered or
43 certified mail, the date of registration or certification shall
44 be deemed the postmark date.

45 (e) *Last date for filing or payment*. — The last date for
46 timely filing or timely making payment shall include any
47 extension of time authorized by law or regulation and any
48 extension of time granted in writing by the tax
49 commissioner.

§11-10-5g. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.

1 When the last day prescribed under authority of this
2 article or any article of this chapter imposing any tax
3 administered under this article for performing any act falls
4 on Saturday, Sunday or a legal holiday, the performance of
5 such act shall be considered timely if it is performed on the
6 next succeeding day which is not a Saturday, Sunday or a
7 legal holiday. For purposes of this section, the last day for
8 the performance of any act shall be determined by including
9 any authorized extension of time; and the term "legal
10 holiday" means a legal holiday in this state.

§11-10-5h. Enforcement proceedings.

1 The enforcement of any of the collection provisions of
2 this article in any of the courts of this state shall be under
3 the exclusive jurisdiction of the tax commissioner. The tax
4 commissioner may, at his request, be represented in any
5 such collection civil action by the attorney general, the
6 prosecuting attorney of any county in which action is
7 instituted or by any attorney permanently employed by the
8 tax commissioner and designated by the attorney general to
9 be a special assistant attorney general. In all other court
10 proceedings on appeals of administrative decisions of the
11 tax commissioner, the tax commissioner shall be
12 represented by the attorney general. Whenever a
13 prosecuting attorney represents the tax commissioner in
14 civil collection actions or the like, such prosecuting
15 attorney shall receive no fees or compensation in addition to
16 the salary paid by the county for such office for services
17 rendered.

§11-10-5i. Enforcement powers.

1 Any employee of the state tax department, so designated
2 by the tax commissioner, and who shall have attended a
3 course of instruction at the state police academy, or its
4 equivalent, shall have all the lawful powers delegated to
5 members of the department of public safety except the
6 power to carry firearms to enforce the provisions of article
7 nine of this chapter in any county or municipality of this
8 state. Any such employee shall, before entering upon the
9 discharge of his duties, execute a bond with security in the

10 sum of three thousand five hundred dollars, payable to the
11 state of West Virginia, conditioned for the faithful
12 performance of his duties, as such, and such bond shall be
13 approved as to form by the attorney general, and the same
14 shall be filed with the secretary of state and preserved in his
15 office. The department of public safety, any county sheriff
16 (or his deputy) or any municipal police officer, upon request
17 by the tax commissioner, is hereby authorized to assist the
18 tax commissioner in enforcing the provisions of article nine
19 of this chapter and the criminal penalty provisions of this
20 article or any article of this chapter administered under this
21 article.

§11-10-5j. Liability for taxes withheld or collected.

1 Whenever any person is required by this article (or any
2 article of this chapter administered by this article) to collect
3 or withhold any tax from any person and to pay it over to the
4 tax commissioner, the amount of tax so collected or
5 withheld shall be deemed to be moneys held in trust for the
6 state of West Virginia. The amount of such moneys shall be
7 assessed, collected and paid in the same manner and subject
8 to the same provisions and limitations (including penalties)
9 as are applicable with respect to the taxes from which such
10 fund arose.

§11-10-5k. Fractional parts of a cent.

1 In the payment of any tax administered by this article, a
2 fractional part of a cent shall be disregarded unless it
3 amounts to one-half cent or more, in which case it shall be
4 increased to one cent.

§11-10-5l. Payment of estimated tax.

1 Payment of estimated tax or any installment thereof,
2 shall be considered payment on account of the tax imposed
3 by any article administered under this article for the
4 taxable year.

§11-10-5m. Overpayment of installments.

1 In the case of tax payable in installments, if the taxpayer
2 has paid, as an installment of the tax, more than the amount
3 determined to be the correct amount of such installment,
4 the overpayment shall be credited against the unpaid

5 installments, if any for the taxable year. If the amount
6 already paid, whether or not on the basis of installments,
7 exceeds the amount determined to be the correct amount of
8 the tax due for the taxable year, the overpayment shall be
9 credited or refunded as provided in section fourteen of this
10 chapter.

§11-10-5n. Payment by check or money order.

1 (a) *Check or money order unpaid.*

2 (1) *Ultimate liability.* — If a check or money order
3 tendered in payment of taxes is not duly paid, the person by
4 whom such check or money order was tendered shall remain
5 liable for payment of the tax and for all legal penalties and
6 additions thereto, to the same extent as if such check or
7 money order had not been tendered.

8 (2) *Liability of bank and others.* — If any certified
9 treasurer's or cashier's check (or other guaranteed draft) or
10 any money order tendered for payment of taxes is not duly
11 paid, the state of West Virginia shall, in addition to its right
12 to exact payment from the party originally indebted
13 therefor, have a lien for the amount of such check (or draft)
14 upon all the assets of the financial institution on which it is
15 drawn or for the amount of such money order upon all the
16 assets of the issuer thereof; and such amount shall be paid
17 out of the assets in preference to any other claims
18 whatsoever against such financial institution or issuer,
19 except the necessary costs and expenses of administration
20 and perfected liens that are prior in time.

21 (b) *Bad check charge.* — If any check or money order
22 tendered in payment of any amount of tax, interest,
23 additions to tax or penalties is not duly paid, then, in
24 addition to any other penalties provided by law, there shall
25 be paid as a penalty by the person who tendered such check,
26 upon written notice and demand by the tax commissioner,
27 in the same manner as tax, an amount equal to the service
28 charge which the bank or other financial institution
29 charged the state for each check returned to the tax
30 commissioner because the account is closed or there are
31 insufficient funds in the account.

§11-10-5o. Notice of fiduciary relationship.

1 (a) *Rights and obligations of fiduciary.* — Upon notice to
2 the tax commissioner that any person is acting for another

3 person in a fiduciary capacity, such fiduciary shall assume
4 that power, rights, duties and privileges of such other
5 person in respect of any tax administered under this article
6 (except that the tax shall be collected from the estate of such
7 other person), until notice is given that the fiduciary
8 capacity has terminated.

9 (b) *Notice.* — Notice under this section shall be given in
10 accordance with regulations prescribed by the tax
11 commissioner.

§11-10-5p. Effective date of amendments.

1 Any amendment to any article administered under this
2 article shall first apply to a particular taxpayer for taxable
3 years beginning on or after the effective date of the act of
4 the Legislature containing such amendment, as determined
5 under article six, section thirty of the constitution of this
6 state, unless the language of the act provides a controlling
7 internal effective date provision.

§11-10-5q. Settlement agreements and compromises.

1 (a) *Closing agreements authorized.* — The tax
2 commissioner is authorized to enter into an agreement in
3 writing with any person relating to the liability of such
4 person (or of the person or estate for whom he acts) in
5 respect of any tax administered by the tax commissioner
6 under this article, for any taxable period.

7 (b) *Finality of closing agreement.* — If a closing
8 agreement is entered into by the tax commissioner, (within
9 such time as may be stated in such agreement, or later
10 agreed to) such agreement shall be final and conclusive, and
11 except upon a showing of fraud or malfeasance or
12 misrepresentation of a material fact:

13 (1) The matters so agreed upon shall not be reopened, or
14 the agreement modified by any officer, employee or agent of
15 this state; and

16 (2) In any civil action or administrative proceeding, the
17 closing agreement or any determination, assessment,
18 collection, payment, abatement, refund or credit made in
19 accordance therewith, shall not be annulled, modified, set
20 aside or disregarded.

21 (c) *Compromises authorized.* — The tax commissioner
22 may compromise all or part of any civil case arising under

23 the provisions of this article. In all such matters involving
24 issues in respect of tax liability in controversy of fifteen
25 thousand dollars or more for one or all of the years involved
26 in such matter, claim or case, the tax commissioner shall
27 seek the written recommendation of the attorney general
28 before entering into such compromise. Any liability for tax
29 (including any interest, additions to tax and penalties) may
30 be compromised upon one or more, or both, of the following
31 grounds:

32 (1) Doubt as to liability; or

33 (2) Doubt as to collectibility.

34 (d) *Record of compromise.* — Whenever a compromise is
35 made by the tax commissioner under subsection (c), there
36 shall be placed on file in the tax commissioner's office the
37 opinion of the tax commissioner's legal counsel (with his
38 reasons therefor) and any written recommendation of the
39 attorney general received pursuant to subsection (c) above
40 together with a statement of:

41 (1) The amount of tax assessed,

42 (2) The amount of interest, additions to the tax, or
43 assessable penalty imposed by law on the person against
44 whom the tax is assessed, and

45 (3) The amount actually paid in accordance with the
46 terms of compromise.

47 Notwithstanding the foregoing provisions of this
48 subsection (d), no such opinion shall be required with
49 respect to the compromise of any civil case in which the
50 amount of tax assessed (including any interest, additions to
51 tax or assessable penalty) is less than one thousand dollars.

52 (e) *Report to Legislature.* — The tax commissioner shall
53 submit to the Speaker of the House of Delegates, the
54 President of the Senate and the legislative auditor a
55 quarterly report summarizing the issues and amounts of
56 liabilities contained in the agreements and compromises
57 into which he has entered pursuant to this section. Such
58 report shall be in a form which preserves the confidentiality
59 of the identity of the taxpayers involved in such agreements
60 and compromises. Notwithstanding any other provision of
61 law to the contrary, the agreements and compromises
62 entered into pursuant to this section shall be subject to
63 audit, in their entirety, by the legislative auditor.

§11-10-5r. Technical assistance advisories.

1 (a) The tax commissioner may issue an informal
2 technical assistance advisory to a person, upon written
3 request, as to the position of his office on the tax
4 consequences of a stated transaction or event, under
5 existing statutes, rules or policies. However, after the
6 issuance of an assessment to a taxpayer, a technical
7 assistance advisory may not be issued to that taxpayer with
8 respect to the issue or issues involved in the assessment.

9 (b) A technical assistance advisory shall have no
10 precedential value except to the taxpayer who requests the
11 advisory and then only for the specific transaction
12 addressed in the technical assistance advisory, unless
13 specifically stated otherwise in the advisory.

14 (c) Any modification of an advisory shall be prospective
15 only.

16 (d) The tax commissioner may, in his discretion,
17 promulgate rules prescribing guidelines and procedures for
18 submission, issuance or denial of assistance, and disclosure
19 of technical assistance advisory: *Provided*, That the tax
20 commissioner shall not disclose a technical assistance
21 advisory to any person other than the person who requested
22 the advisory, or his authorized representative, without first
23 deleting the name, address and other identifying details of
24 the person to whom the technical assistance advisory was
25 issued, unless that person executes a written waiver of
26 confidentiality.

27 (e) The tax commissioner shall release copies of technical
28 assistance advisories issued pursuant to this section to the
29 public. Any identifying characteristics or facts about the
30 taxpayer shall be omitted or modified in such technical
31 assistance advisories to such an extent so as to not disclose
32 the name or identity of the taxpayer.

§11-10-6. Mathematical or clerical errors; collection of balance due on return without remittance.

1 (a) *Mathematical or clerical error.* — When it appears to
2 the tax commissioner that the taxpayer has made a
3 mathematical error (including an overstatement of the
4 credit for the amount paid as estimated tax), or clerical
5 error, the tax commissioner shall correct such error and
6 notify the taxpayer, in writing, of the deficiency or

7 overpayment in tax. The taxpayer shall have fifteen days
8 after receipt of such notice within which to pay any such
9 deficiency. If the taxpayer fails to pay such deficiency
10 within fifteen days, the tax commissioner shall make an
11 assessment of such deficiency in accordance with section
12 seven and shall give the taxpayer written notice thereof.

13 (b) *Collection of balance due.* — If a taxpayer files a
14 mathematically correct return which reflects a balance due
15 of any tax administered under this article, and if full
16 payment thereof has not been made, the tax commissioner
17 shall notify the taxpayer, in writing, of the amount of tax,
18 additions to tax, penalties or interest due. The taxpayer
19 shall have fifteen days after receipt of such notice within
20 which to make payment. If the taxpayer fails to make
21 payment within such fifteen-day period, the tax
22 commissioner shall proceed under section eleven of this
23 article to collect the amount due.

24 (c) *Certain terms defined.* — For the purposes of this
25 section:

26 (1) *Mathematical or clerical error.* — The term
27 “mathematical or clerical error” means:

28 (A) An error in addition, subtraction, multiplication or
29 division shown on any return;

30 (B) An incorrect use of any table provided by the tax
31 commissioner with respect to any return if such incorrect
32 use is apparent from the existence of other information on
33 the return;

34 (C) An entry on a return of an item which is inconsistent
35 with another entry of the same or another item on such
36 return;

37 (D) An omission of information which is required to be
38 supplied on the return to substantiate an entry on the
39 return; and

40 (E) An entry on a return of a deduction or credit in an
41 amount which exceeds a statutory limit, if such limit is
42 expressed:

43 (i) As a specified monetary amount, or

44 (ii) As a percentage, ratio, or fraction, and if the items
45 entering into the application of such limit appear on such
46 return.

47 (2) *Return.* — The term “return” includes any return,
48 statement, schedule, or list, and any amendment or

49 supplement thereto filed with respect to any tax
50 administered under this article.

§11-10-7. Assessment.

1 (a) *General.* — If the tax commissioner believes that any
2 tax administered under this article has been insufficiently
3 returned by a taxpayer, either because the taxpayer has
4 failed to properly remit the tax, or has failed to make a
5 return, or has made a return which is incomplete, deficient
6 or otherwise erroneous, he may proceed to investigate and
7 determine or estimate the tax liability and make an
8 assessment therefor.

9 (b) *Jeopardy assessments.* — If the tax commissioner
10 believes that the collection of any tax administered under
11 this article will be jeopardized by delay, he shall thereupon
12 make an assessment of tax, noting that fact upon the
13 assessment. The amount assessed shall immediately be due
14 and payable. Unless the taxpayer against whom a jeopardy
15 assessment is made posts the required security and
16 petitions for reassessment within twenty days after service
17 of notice of the jeopardy assessment, such assessment shall
18 become final: *Provided*, That upon written request of the
19 taxpayer made within such twenty-day period, showing
20 reasonable cause therefor, the tax commissioner may grant
21 an extension of time not to exceed thirty additional days
22 within which such petition may be filed. If a taxpayer
23 against whom a jeopardy assessment has been made
24 petitions for reassessment or requests an extension of time
25 to file a petition for reassessment, the petition or request
26 shall be accompanied by remittance of the amount assessed
27 or such security as the tax commissioner may deem
28 necessary to ensure compliance with the applicable
29 provisions of this chapter. If a petition for reassessment is
30 timely filed, and the amount assessed has been remitted, or
31 such other security posted, the provisions for hearing,
32 determination and appeal set forth in sections nine and ten
33 shall then be applicable.

34 (c) *Amendment of assessment.* — The tax commissioner
35 may, at any time before the assessment becomes final,
36 amend, in whole or in part, any assessment whenever he
37 ascertains that such assessment is improper or incomplete
38 in any material respect.

39 (d) *Supplemental assessment.* — The tax commissioner
40 may, at any time within the period prescribed for
41 assessment, make a supplemental assessment whenever he
42 ascertains that any assessment is imperfect or incomplete in
43 any material respect.

44 (e) *Address for notice of assessment.*

45 (1) *General rule.* — In the absence of notice to the tax
46 commissioner under section five-o of the existence of a
47 fiduciary relationship, notice of assessment, if sent by
48 certified mail or registered mail to the taxpayer at his last
49 known address, shall be sufficient even if such taxpayer is
50 deceased, or is under a legal disability, or, in the case of a
51 corporation, has terminated its existence.

52 (2) *Joint income tax return.* — In the case of a joint
53 income tax return filed by a husband and wife, such notice
54 of assessment may be a single notice, except that if the tax
55 commissioner has been notified by either spouse that
56 separate residences have been established, then in lieu of a
57 single notice, a duplicate original of the joint notice shall be
58 sent by certified or registered mail to each spouse at his last
59 known address.

60 (3) *Estate tax.* — In the absence of notice to the tax
61 commissioner of the existence of a fiduciary relationship,
62 notice of assessment of a tax imposed by article eleven of
63 this chapter, if addressed in the name of the decedent or
64 other person subject to liability and mailed to his last
65 known address, by registered or certified mail, shall be
66 sufficient for purposes of this article and article eleven of
67 this chapter.

§11-10-7a. Abatement.

1 (a) *General rule.* — The tax commissioner is authorized
2 to abate the assessment of any tax or any liability in respect
3 thereto which:

4 (1) Is void, or

5 (2) Is assessed after the expiration of the period of
6 limitation properly applicable thereto, or

7 (3) Is voidable: *Provided*, That no claim for abatement
8 shall be filed by a taxpayer under this subdivision if the
9 assessment has become final.

10 (b) *Small tax balances.* — The tax commissioner is
11 authorized to abate the unpaid portion of an assessment of

12 any tax, or any liability in respect thereof, which has
13 become final, if the tax commissioner determines under
14 uniform rules promulgated by him that the administration
15 and collection costs involved would not warrant collection
16 of the amount due.

**§11-10-8. Notice of assessment; petition for reassessment or
payment of assessment within sixty days; finality
of assessment; payment of final assessment;
effective date.**

1 (a) *Notice of assessment.* — The tax commissioner shall
2 give the taxpayer written notice of any assessment or
3 amended or supplemental assessment made pursuant to
4 this article. The assessment or amended or supplemental
5 assessment, as the case may be, shall become final and
6 conclusive of the liability of the taxpayer and not subject to
7 either administrative or judicial review under the
8 provisions of sections nine or nine-a, and ten of this article
9 unless the taxpayer to whom a notice of assessment or
10 amended or supplemental assessment, is given, shall within
11 sixty days after service thereof (except in the case of
12 jeopardy assessments, as to which the time for filing a
13 petition is specified in section seven) either:

14 (1) *Petition for reassessment.* — Personally or by
15 certified mail, files with the tax commissioner a petition in
16 writing, verified under oath by the taxpayer or his duly
17 authorized agent having knowledge of the facts, setting
18 forth with particularity the items of the assessment
19 objected to, together with the reasons for such objections;
20 or

21 (2) *Payment of assessment.* — Personally or by certified
22 mail, remits to the tax commissioner the total amount of the
23 assessment or amended or supplemental assessment,
24 including such additions to tax and penalties as may have
25 been assessed and the amount of interest due.

26 (b) *Finality of assessment.* — The amount of an
27 assessment or amended or supplemental assessment shall
28 be due and payable on the day following the date upon
29 which the assessment or amended or supplemental
30 assessment becomes final. Payment of the amount of the
31 assessment, or amended or supplemental assessment, as
32 provided in subdivision (2), above, within sixty days after

33 service of notice of such assessment shall not prohibit or
34 otherwise bar the taxpayer from filing a claim for refund or
35 credit under the provisions of section fourteen of this article
36 within the time prescribed therein for the filing of a claim
37 for refund or credit.

38 (c) *Payment of assessment after petition filed.* — A
39 taxpayer who has timely filed a petition for reassessment
40 may, at any time prior to issuance of the tax commissioner's
41 administrative decision under section nine or nine-a of this
42 article, pay under protest the amount of the assessment.
43 Upon such payment, the contested case shall thereafter be
44 treated for all purposes as a petition for refund: *Provided,*
45 That if payment is made after the administrative hearing
46 under section nine or nine-a of this article has commenced
47 or concluded, a new hearing shall not be held, but the record
48 thereof shall be properly amended by the tax commissioner
49 to show that the amount assessed has been paid under
50 protest by the taxpayer and that the petition for
51 reassessment previously filed under this section is now to be
52 treated as a petition for refund filed under section fourteen
53 of this article.

54 (d) *Effective date.* — This section, as amended, shall
55 apply to all assessments (including amended and
56 supplemental assessments) which are issued on or after the
57 first day of July, one thousand nine hundred eighty-six,
58 and to all assessments issued prior to such effective date
59 which have not become final as provided in this section.

**§11-10-9a. Small claims procedure; disputes involving \$10,000
or less.**

1 (a) *In general.* — Notwithstanding the provisions of
2 section nine of this article, if the amount in dispute in any
3 petition for reassessment filed under section eight or in any
4 petition for refund or credit filed under section fourteen
5 does not exceed ten thousand dollars for any one taxable
6 year, then, at the option of the taxpayer and concurred in by
7 the tax commissioner before the hearing of the case,
8 proceedings in the case shall be conducted under this
9 section. Such proceedings shall be conducted in an informal
10 manner and in accordance with such rules of evidence and
11 rules of procedure as the tax commissioner may prescribe. A
12 decision, together with a brief summary of the reasons
13 therefor shall be issued by the tax commissioner.

14 (b) *Finality of decision.* — A decision entered in any case
15 in which proceedings are conducted under this section shall
16 not be subject to review, administrative or judicial, and
17 shall not be treated as precedent for any other case.

18 (c) *Discontinuance of proceedings.* — At any time before
19 commencement of the hearing held under this section, the
20 taxpayer may unilaterally withdraw its election made
21 under subsection (a); and at any time before a decision is
22 issued under this section, the taxpayer may request or the
23 tax commissioner, on his own motion, may order that
24 further proceedings under this section in such case be
25 discontinued because there are reasonable grounds for
26 believing that the amount in dispute exceeds the amount
27 described in subsection (a) of this section. Upon any such
28 discontinuance, or change of election, a hearing shall be
29 held in the same manner as other cases to which section nine
30 of this article applies.

31 (d) *Amount of deficiency in dispute.* — For purposes of
32 this section, the amount in dispute includes tax, additions
33 to tax, additional amounts and penalties. It excludes
34 interest.

§11-10-10. Appeals.

1 (a) *Right of appeal.* — A taxpayer may appeal the
2 administrative decision of the tax commissioner issued
3 under section nine or fourteen of this article, by taking an
4 appeal to the circuit courts of this state within sixty days
5 after being served with notice of the administrative
6 decision.

7 (b) *Venue.* — The appeal may be taken in the circuit
8 court of any county:

9 (1) Wherein the activity taxed was engaged in; or

10 (2) Wherein the taxpayer resides; or

11 (3) Wherein the will of the decedent was probated or
12 letters of administration granted; or

13 (4) To the circuit court of Kanawha County.

14 (c) *Petition for appeal.* — The appeal proceeding shall
15 be instituted by filing a petition with the circuit court, or
16 the judge thereof in vacation, within the sixty-day period
17 prescribed in subsection (a). The clerk of the circuit court
18 shall, within ten days after date the petition is filed, serve
19 the tax commissioner with a copy of the same by registered

20 or certified mail. This petition shall be in writing, verified
21 under oath by the taxpayer, or his duly authorized agent,
22 having knowledge of the facts, set forth with particularity
23 the items of the administrative decision or the assessment
24 objected to, together with the reasons for such objections.

25 (d) *Appeal bond.* — If the appeal is of any assessment for
26 additional taxes (except a jeopardy assessment for which
27 security in the amount thereof was previously filed with the
28 tax commissioner), then within ninety days after the
29 petition for appeal is filed, or sooner if ordered by the
30 circuit court, the taxpayer shall file with the clerk of the
31 circuit court a cash bond or a corporate surety bond
32 approved by the clerk. The surety must be qualified to do
33 business in this state. These bonds shall be conditioned that
34 the taxpayer shall perform the orders of the court. The
35 penalty of this bond shall be not less than the total amount
36 of tax, additions to tax, penalties and interest for which the
37 taxpayer was found liable in the administrative decision of
38 the tax commissioner. Notwithstanding the foregoing and
39 in lieu of such bond, the tax commissioner, in his discretion
40 upon such terms as he may prescribe, may upon a sufficient
41 showing by the taxpayer, certify to the clerk of the circuit
42 court that the assets of the taxpayer subject to the lien
43 imposed by section twelve of this article, or other
44 indemnification, are adequate to secure performance of the
45 orders of the court.

46 (e) *Hearing of appeal.* — The court shall hear the appeal
47 and determine anew all questions submitted to it on appeal
48 from the determination of the tax commissioner. In such
49 appeal a certified copy of the tax commissioner's notice of
50 assessment or amended or supplemental assessment and
51 administrative decision thereon shall be admissible and
52 shall constitute prima facie evidence of the tax due under
53 the provisions of those articles of this chapter to which this
54 article is applicable. The court shall render its decree
55 thereon and a certified copy of said decree shall be filed by
56 the clerk of the court with the tax commissioner who shall
57 then correct the assessment in accordance with the decree.
58 An appeal may be taken by the taxpayer or the tax
59 commissioner to the supreme court of appeals of this state.

§11-10-11. Collection of tax.

1 (a) *General.* — The tax commissioner shall collect the
2 taxes, additions to tax, penalties and interest imposed by
3 this article or any of the other articles of this chapter to
4 which this article is applicable. In addition to all other
5 remedies available for the collection of debts due this state,
6 the tax commissioner may proceed by foreclosure of the lien
7 provided in section twelve, or by levy and distraint under
8 section thirteen.

9 (b) *Prerequisite to final settlement of contracts with*
10 *nonresident contractor; user personally liable.*

11 (1) Any person contracting with a nonresident
12 contractor subject to the taxes imposed by articles thirteen,
13 twenty-one and twenty-four of this chapter, shall withhold
14 payment, in the final settlement of such contract, of such
15 sufficient amount, not exceeding six percent of the contract
16 price, as will in such person's opinion be sufficient to cover
17 such taxes, until the receipt of a certificate from the tax
18 commissioner to the effect that the above referenced taxes
19 imposed against the nonresident contractor have been paid
20 or provided for.

21 (2) If any person shall fail to withhold as provided
22 herein, such person shall be personally liable for the
23 payment of all such taxes attributable to the contract, not to
24 exceed six percent of the contract price. The same shall be
25 recoverable by the tax commissioner by appropriate legal
26 proceedings, which may include issuance of an assessment
27 under this article.

28 (c) *Prerequisite for issuance of certificate of dissolution*
29 *or withdrawal of corporation.* — The secretary of state shall
30 withhold the issuance of any certificate of dissolution or
31 withdrawal in the case of any corporation organized under
32 the laws of this state, or organized under the laws of another
33 state and admitted to do business in this state, until the
34 receipt of a certificate from the tax commissioner to the
35 effect that every tax administered under this article
36 imposed against any such corporation has been paid or
37 provided for, or that the applicant is not liable for any tax
38 administered under this article.

39 (d) *Prerequisite to final settlement of contract with this*
40 *state or political subdivision; penalty.* — All state, county,

41 district and municipal officers and agents making contracts
42 on behalf of this state or any political subdivision thereof
43 shall withhold payment, in the final settlement of any such
44 contract, until the receipt of a certificate from the tax
45 commissioner to the effect that the taxes imposed by
46 articles thirteen, twenty-one and twenty-four of this
47 chapter against the contractor have been paid or provided
48 for. If the transaction embodied in such contract or the
49 subject matter of the contract is subject to county or
50 municipal business and occupation tax, then such payment
51 shall also be withheld until receipt of a release from such
52 county or municipality to the effect that all county or
53 municipal business and occupation taxes levied or accrued
54 against the contractor have been paid. Any official
55 violating this section shall be subject to a civil penalty of
56 one thousand dollars, recoverable as a debt in a civil action
57 brought by the tax commissioner.

58 (e) *Limited effect of tax commissioner's certificates.* —
59 The certificates of the tax commissioner provided for in
60 subsections (b), (c) and (d) of this section shall not bar
61 subsequent investigations, assessments, refunds and
62 credits with respect to the taxpayer.

63 (f) *Payment when person sells out or quits business;*
64 *liability of successor; lien.*

65 (1) If any person subject to any tax administered under
66 this article sells out his or its business or stock of goods, or
67 ceases doing business, any tax, additions to tax, penalties
68 and interest imposed by this article or any of the other
69 articles of this chapter to which this article is applicable
70 shall become due and payable immediately and such person
71 shall, within thirty days after selling out his or its business
72 or stock of goods or ceasing to do business, make a final
73 return or returns and pay any tax or taxes which may be
74 due. The unpaid amount of any such tax shall be a lien upon
75 the property of such person.

76 (2) The successor in business of any person who sells out
77 his or its business or stock of goods, or ceases doing
78 business, shall be personally liable for the payment of tax,
79 additions to tax, penalties and interest unpaid after
80 expiration of the thirty-day period allowed for payment:
81 *Provided*, That if the business is purchased in an arms-
82 length transaction, and if the purchaser withholds so much

83 of the consideration for the purchase as will satisfy any tax,
84 additions to tax, penalties and interest which may be due
85 until the seller produces a receipt from the tax
86 commissioner evidencing the payment thereof, the
87 purchaser shall not be personally liable for any taxes
88 attributable to the former owner of the business unless the
89 contract of sale provides for the purchaser to be liable for
90 some or all of such taxes. The amount of tax, additions to
91 tax, penalties and interest for which the successor is liable
92 shall be a lien on the property of the successor, which shall
93 be enforced by the tax commissioner as provided in this
94 article.

95 (g) *Priority in distribution of estate or property in*
96 *receivership; personal liability of fiduciary.* — All taxes due
97 and unpaid under this article shall be paid from the first
98 money available for distribution, voluntary or compulsory,
99 in receivership, bankruptcy or otherwise, of the estate of
100 any person, firm or corporation, in priority to all claims,
101 except taxes and debts due the United States which under
102 federal law are given priority over the debts and liens
103 created by this article. Any trustee, receiver, administrator,
104 executor or person charged with the administration of an
105 estate who shall violate the provisions of this section shall
106 be personally liable for any taxes accrued and unpaid under
107 this article, which are chargeable against the person, firm
108 or corporation whose estate is in administration.

109 (h) *Injunction.* — If the taxpayer fails for a period of
110 more than sixty days to fully comply with any of the
111 provisions of this article or of any other article of this
112 chapter to which this article is applicable, the tax
113 commissioner may institute a proceeding to secure an
114 injunction to restrain the taxpayer from doing business in
115 this state until the taxpayer fully complies with the
116 provisions of this article or any of such other articles. No
117 bond shall be required of the tax commissioner in any
118 action instituted under this subsection.

119 (i) *Costs.* — In any proceeding under this section, upon
120 judgment or decree for the tax commissioner, he shall be
121 awarded his costs.

122 (j) *Refunds; credits; right to offset.* — Whenever a
123 taxpayer has a refund or credit due it for an overpayment of
124 any tax administered under this article, the tax

125 commissioner may reduce the amount of such refund or
126 credit by the amount of any tax administered under this
127 article, whether it be the same tax or any other tax, which is
128 owed by the same taxpayer, and collectible as provided in
129 subsection (a) of this section.

130 (k) *Spouse relieved of liability in certain cases.*

131 (l) *In general.* — Under regulations prescribed by the
132 tax commissioner, if—

133 (A) A joint personal income tax return has been made
134 for a taxable year,

135 (B) On such return there is a substantial
136 understatement of tax attributable to grossly erroneous
137 items of one spouse,

138 (C) The other spouse establishes that in signing the
139 return he or she did not know, and had no reason to know,
140 that there was such substantial understatement, and

141 (D) Taking into account all the facts and circumstances,
142 it is inequitable to hold the other spouse liable for the
143 deficiency in tax for such taxable year attributable to such
144 substantial understatement, then the other spouse shall be
145 relieved of any liability for tax (including interest,
146 additions to tax, and other amounts) for such taxable year
147 to the extent such liability is attributable to such
148 substantial understatement.

149 (2) *Grossly erroneous items.* — For purposes of this
150 subsection, the term “grossly erroneous items” means, with
151 respect to any spouse—

152 (A) Any item of gross income attributable to such
153 spouse which is omitted from gross income, and

154 (B) Any claim of a deduction, credit, or basis by such
155 spouse in an amount for which there is no basis in fact or
156 law.

157 (3) *Substantial understatement.* — For purposes of this
158 subsection, the term “substantial understatement” means
159 any understatement (as defined in regulations prescribed
160 by the tax commissioner) which exceed five hundred
161 dollars.

162 (4) *Understatement must exceed specified percentage of*
163 *spouse's income.*

164 (A) *Adjusted gross income of twenty thousand dollars or*
165 *less.* — If the spouse's adjusted gross income for the pread-
166 justment year is twenty thousand dollars or less, this subsec-

167 tion shall apply only if the liability described in subdivision
168 (1) is greater than ten percent of such adjusted gross income.

169 (B) *Adjusted gross income of more than twenty*
170 *thousand dollars.* — If the spouse's adjusted gross income
171 for the preadjustment year is more than twenty thousand
172 dollars, subparagraph (A) shall be applied by substituting
173 "twenty-five percent" for "ten percent".

174 (C) *Preadjustment year.* — For purposes of this
175 paragraph, the term "preadjustment year" means the most
176 recent taxable year of the spouse ending before the date the
177 deficiency notice is mailed.

178 (D) *Computation of spouse's adjusted gross income.* —
179 If the spouse is married to another spouse at the close of the
180 preadjustment year, the spouse's adjusted gross income
181 shall include the income of the new spouse (whether or not
182 they file a joint return).

183 (E) *Exception for omissions from gross income.* — This
184 paragraph shall not apply to any liability attributable to the
185 omission of an item from gross income.

186 (5) *Adjusted gross income.* — For purposes of this
187 subsection, the term "adjusted gross income" means the
188 West Virginia adjusted gross income of the taxpayer,
189 determined under article twenty-one of this chapter.

§11-10-12. Liens, release; subordination; foreclosure.

1 (a) *General.* — Any tax, additions to tax, penalties or
2 interest due and payable under this article or any of the
3 other articles of this chapter to which this article is
4 applicable shall be a debt due this state. It shall be a
5 personal obligation of the taxpayer and shall be a lien upon
6 the real and personal property of the taxpayer.

7 (b) *Duration of lien.* — The lien created by this section
8 shall continue until the liability for the tax, additions to tax,
9 penalties and interest is satisfied or becomes unenforceable
10 by reason of lapse of time.

11 (c) *Recordation.* — The lien created by this section shall
12 be subject to the restrictions and conditions embodied in
13 article ten-c, chapter thirty-eight of this code and any
14 amendment made or which may hereafter be made thereto.

15 (d) *Release or subordination.* — The tax commissioner,
16 pursuant to rules or regulations prescribed by him, may
17 issue his certificate of release of any lien created pursuant

18 to this section when the debt is adequately secured by bond
19 or other security. He shall issue his certificate of release
20 when the debt secured has been satisfied. The certificate of
21 release shall be issued in duplicate. One copy shall be
22 forwarded to the taxpayer, and the other copy shall be
23 forwarded to the clerk of the county commission of the
24 county wherein the lien is recorded. The clerk of the county
25 commission shall record the release without payment of any
26 fee and such recordation shall constitute a release and full
27 discharge of the lien. The tax commissioner may issue his
28 certificate of release of any such lien as to all or any part of
29 the property subject to the lien, or may subordinate such
30 lien to any other lien or interest, but only if there is paid to
31 the state an amount not less than the value of the interest of
32 the state in such property, or if the interest of the state in
33 such property has no value.

34 (e) *Foreclosure.* — The tax commissioner may enforce
35 any lien created and recorded under this section, against
36 any property subject to such lien by civil action in the
37 circuit court of the county wherein such property is located,
38 in order to subject such property to the payment of the tax
39 secured by such lien. All persons having liens upon or
40 having any interest in the property shall be made parties to
41 such action. The court may appoint a receiver or
42 commissioner who shall ascertain and report all liens,
43 claims and interests in and upon the property, the validity,
44 amount and priority of each. The court shall, after notice to
45 all parties, proceed to adjudicate all matters involved
46 therein, shall determine the validity, amount and priorities
47 of all liens, claims and interests in and upon the property
48 and shall decree a sale of such property by the sheriff or any
49 commissioner to whom the action is referred, and shall
50 decree distribution of the proceeds of such sale according to
51 the findings of the court in respect to the interests of the
52 parties.

53 (f) *Discharge of lien.* — A sale of property against which
54 the state has a lien under this section, made pursuant to an
55 instrument creating a lien on such property, or made
56 pursuant to a statutory lien on such property, or made
57 pursuant to a judicial order to enforce any judgment in any
58 civil action, shall be made subject to and without disturbing
59 the state tax lien if the state tax lien was recorded more than

60 thirty days before such sale, unless:

61 (1) The tax commissioner is made a party to such civil
62 action, or

63 (2) The tax commissioner is given notice of such sale in
64 writing not less than fifteen days prior to sale, or

65 (3) The tax commissioner consents to such sale. Such
66 notice shall contain the name of the owner of the property
67 and the social security number or federal employer
68 identification number of the owner.

§11-10-13. Levy and distraint.

1 (a) *Authority of tax commissioner.* — If any tax
2 administered under this article is shown to be due on a
3 return, it is required to be paid at the time the return is filed
4 and if any portion of such tax is not so paid, or if an
5 assessment of tax is made by the tax commissioner and
6 notice thereof is given as required by this article and such
7 assessment has become final and is not subject to
8 administrative or judicial review, then, if any person liable
9 to pay any tax administered under this article neglects or
10 refuses to pay the same within fifteen days after notice and
11 demand, it shall be lawful for the tax commissioner (or his
12 delegate) to collect such tax (and such further sum as is
13 sufficient to cover the expense of the levy) by levy upon all
14 property and rights to property belonging to such person or
15 on which there is a lien provided in this article, or any
16 article administered under this article, for payment of the
17 tax. If the tax commissioner makes a finding that the
18 collection of such tax is in jeopardy, notice and demand for
19 immediate payment of such tax may be given by the tax
20 commissioner (or his delegate) and, upon failure or refusal
21 to pay such tax, collection thereof by levy shall be lawful
22 without regard to the fifteen-day period provided in this
23 section.

24 (b) *“Levy” defined.* — The term “levy” as used in this
25 section includes the power of distraint and seizure by any
26 means. Except as otherwise provided in this section, a levy
27 shall extend only to property possessed and obligations
28 existing at the time thereof. In any case in which the tax
29 commissioner, or his delegate, may levy upon property or
30 rights to property, he may seize and sell such property or
31 rights to property, whether such property be real or
32 personal, tangible or intangible.

33 (c) *Successive seizures.* — Whenever any property or a
34 right to property upon which levy has been made by virtue
35 of subsection (a) is not sufficient to satisfy the claim of the
36 state of West Virginia for which levy is made, the tax
37 commissioner may, thereafter, and as often as may be
38 necessary, proceed to levy in like manner upon any other
39 property liable to levy of the person against whom such
40 claim exists, until the amount due from him, together with
41 all expenses, is fully paid.

42 (d) *Distress warrant.* — The tax commissioner may issue
43 a distress warrant to the sheriff of any county of this state,
44 or to any officer or employee of the state tax department,
45 commanding him to levy upon and sell any such property or
46 rights to property subject to levy in accordance with the
47 provisions of this article. A distress warrant shall be
48 executed within sixty days from the date the warrant was
49 issued. The sheriff shall return the warrant and any money
50 collected to the tax commissioner within sixty-five days
51 from the date the warrant was issued. The provisions of
52 articles four, five and six, chapter thirty-eight of this code
53 shall not apply to the issuance or execution of any distress
54 warrant issued under this subsection.

55 (e) *Requirement of notice before levy.* —

56 (1) *In general.* — Levy may be made under subsection (a)
57 upon the salary or wages or other property or rights to
58 property of any person with respect to any unpaid tax only
59 after the tax commissioner has notified such person in
60 writing of his intention to make such levy.

61 (2) *Ten-day requirement.* — The notice required under
62 subdivision (1) shall be given in person, or left at the dwelling
63 or usual place of business of such person, or sent by certified
64 mail to such person's last known address, no less than ten
65 days prior to the day of levy: *Provided*, That no notice need
66 be given if the tax commissioner has made a finding under
67 the last sentence of subsection (a) that collection of the tax
68 is in jeopardy.

69 (3) *Continuing levy on salary and wages.* — The effect of
70 a levy on salary or wages payable to or received by a
71 taxpayer shall be continuous from the date such levy is first
72 made until the liability out of which such levy arose is
73 satisfied or becomes unenforceable by reason of lapse of
74 time, at which time the tax commissioner shall promptly

75 release such levy and notify the person upon whom such
76 levy was made that such levy has been released.

§11-10-13a. Property exempt from levy.

1 (a) *Enumeration.* — There shall be exempt from levy:

2 (1) *Wearing apparel and school books.* — Items of
3 wearing apparel and school books that are necessary for the
4 taxpayer or for members of his or her family.

5 (2) *Fuel, provisions, furniture and personal effects.* — If
6 the taxpayer is the head of a family, so much of the fuel,
7 provisions, furniture and personal effects in his household
8 and of the arms for personal use, livestock and poultry of
9 the taxpayer, as does not exceed one thousand five hundred
10 dollars in value; if the taxpayer is an individual who is not
11 the head of a household, this exemption shall not exceed one
12 thousand dollars.

13 (3) *Books and tools of a trade, business or profession.* —
14 So many of the books and tools necessary for the trade,
15 business, or profession of the taxpayer as do not exceed in
16 the aggregate one thousand dollars in value.

17 (4) *Unemployment benefits.* — Any amount payable to
18 an individual with respect to his or her unemployment
19 (including any portion thereof payable with respect to
20 dependents) under an unemployment compensation law of
21 the United States, or of this state or any other state.

22 (5) *Undelivered mail.* — Mail, addressed to any person,
23 which has not been delivered to the addressee.

24 (6) *Annuity and pension payments.* — Annuity or
25 pension payments under any pension or retirement plan,
26 including social security payments.

27 (7) *Workers' compensation.* — Any amount payable to
28 an individual as workers' compensation (including any
29 portion thereof payable with respect to dependents) under a
30 workers' compensation law of the United States, or of this
31 state or any other state.

32 (8) *Judgments for support of minor children.* — If the
33 taxpayer is required by a judgment of a court of competent
34 jurisdiction, entered prior to the date of levy, to contribute
35 to the support of his other minor children, so much of his or
36 her salary, wages or other income as is necessary to comply
37 with such judgment.

38 (9) *Public assistance.* — Any amount payable to any

39 person from a public assistance or relief fund created under
40 the law of the United States or of this state or of any other
41 state.

42 (10) *Minimum exemption for wages, salary and other*
43 *income.* — Any amount payable to or receivable by an
44 individual as wages or salary for services provided by an
45 employee to his or her employer, or as income derived from
46 other sources, during any period, to the extent that the total
47 of such amounts payable to or received by him or her during
48 such period does not exceed the applicable exempt amount
49 determined under subsection (d).

50 (11) *Homestead.* — If the taxpayer owns a homestead
51 located in this state, the first five thousand dollars thereof
52 shall be exempt from levy.

53 (b) *Appraisal.* — The officer seizing property of the type
54 described in subsection (a) shall appraise and set aside to
55 the owner the amount of such property declared to be
56 exempt. If the taxpayer objects at the time of the seizure to
57 the valuation fixed by the office making the seizure, the tax
58 commissioner shall summon three disinterested individuals
59 who shall make the valuation.

60 (c) *No other property exempt.* — Notwithstanding any
61 other law of this state, no property or rights to property
62 shall be exempt from levy other than property specifically
63 made exempt by subsection (a).

64 (d) *Exempt amount of wages, salary or other income.* —

65 (1) In the case of an individual who is paid or receives all
66 of his wages, salary and other income on a weekly basis, the
67 amount of the wages, salary and other income payable to or
68 receivable by the person during any week which is exempt
69 from levy under subdivision (1), subsection (a) shall be:

70 (A) Thirty times the state minimum wage per hour, plus

71 (B) Twenty-five dollars for each additional dependent
72 of the taxpayer.

§11-10-13b. Surrender of property subject to levy.

1 (a) *Requirement.* — Any person in possession of (or
2 obligated with respect to) property or rights to property
3 subject to levy upon which a levy has been made shall, upon
4 demand of the tax commissioner, surrender such property
5 or rights (or discharge such obligation) to the tax
6 commissioner, except such part of the property or rights as

7 is, at the time of such demand, subject to any prior
8 attachment, execution or levy.

9 (b) *Enforcement of levy.* —

10 (1) *Extent of personal liability.* — Any person in pos-
11 session of or obligated with respect to property subject
12 to levy upon which levy has been made, who fails or
13 refuses to surrender any property or rights to pro-
14 perty, subject to levy, upon demand by the tax com-
15 missioner, shall be personally liable to the state in a
16 sum equal to the value of the property or rights not so
17 surrendered, but not exceeding the amount of taxes for the
18 collection of which such levy has been made, together with
19 costs and interest on such sum at an annual rate established
20 under section seventeen-a of this article, from the date of
21 the levy. Any amount (other than costs) received under this
22 subdivision shall be credited against the liability for the
23 collection of which such levy was made.

24 (2) *Penalty for violation.* — In addition to the personal
25 liability imposed by subdivision (1), if any person required
26 to surrender property or rights to property fails or refuses
27 to surrender the same without reasonable cause, such person
28 shall be liable for a money penalty equal to fifty percent of
29 the amount recovered under subdivision (1). No part of this
30 penalty shall be credited against the tax liability for the
31 collection of which such levy was made.

32 (c) *Effect of honoring levy.* — Any person in possession
33 of (or obligated with respect to) property or rights to
34 property subject to levy upon which levy has been made,
35 who upon demand by the tax commissioner, surrenders
36 such property or rights to property (or discharges such
37 obligation) to the tax commissioner, or who pays a liability
38 under subdivision (1), subsection (b) shall be discharged
39 from any obligation or liability to the delinquent
40 taxpayer with respect to such property or rights to
41 property arising from such surrender or payment.

42 (d) *“Person” defined.* — The term “person” as used in
43 subsection (a) includes an officer or employee of a
44 corporation or a member or employee of a partnership, who
45 as such officer, employee or member is under a duty to
46 surrender the property or rights to property or to discharge
47 the obligation.

§11-10-13c. Sale of seized property.

1 (a) *Notice of seizure.* — As soon as practicable after
2 seizure of property, notice in writing shall be given by the
3 tax commissioner to the owner of the property (or, in the
4 case of personal property, the possessor thereof), or shall be
5 left at his usual place of abode or business if he has such
6 within the county where the seizure is made. If the owner
7 cannot be readily located, or has no dwelling or place of
8 business within such county, the notice may be mailed to his
9 last known address. Such notice shall specify the sum
10 demanded and shall contain, in the case of personal
11 property, an account of the property seized and, in the case
12 of real property, a description with reasonable certainty of
13 the property seized.

14 (b) *Notice of sale.* — The tax commissioner may sell any
15 property seized under section thirteen of this article. As
16 soon as practicable after the seizure of the property, the tax
17 commissioner shall give notice to the owner, in the manner
18 prescribed in subsection (a), and shall cause a notice of sale
19 to be published as a Class II legal advertisement in some
20 newspaper published or generally circulated within the
21 county wherein such seizure is made, or the county where
22 the property is located, the last date of publication being
23 not less than five days prior to sale. This notice shall
24 identify the property to be sold, and the date, time, place,
25 manner and conditions of the sale thereof, all of which shall
26 be at the discretion of the tax commissioner. The sale shall
27 be conducted by public auction, or by public sale under
28 sealed bids. Before the sale, the tax commissioner may
29 determine a minimum price for which the property shall be
30 sold, and if no person offers for such property at the sale, the
31 amount of the minimum price, the property shall be
32 declared to be purchased at such price for the state of West
33 Virginia; otherwise the property shall be declared to be sold
34 to the highest bidder. In determining the minimum price,
35 the tax commissioner shall take into account the expense of
36 making the levy and sale.

37 (c) *Sale of indivisible property.* — If any property liable
38 to levy is not divisible, so as to enable the tax commissioner
39 by sale of a part thereof to raise the whole amount of the tax
40 and expense of making the levy and sale, the whole of such
41 property shall be sold. However, where the property sold is

42 co-owned or jointly-owned by the taxpayer and an innocent
43 third party, the proceeds of sale shall be divided, based on
44 the respective interests of the persons owning the property
45 immediately prior to the levy and sale, and the proceeds
46 attributable to the interest of the innocent owner or owners
47 shall be distributed to them: *Provided*, That where the
48 property to be sold is so co-owned or jointly-owned by an
49 innocent third party, having no delinquent tax liability
50 attempted to be collected under such levy and sale, such
51 innocent party may petition the circuit court of the county
52 in which the property is located for relief, including
53 postponement of the sale, in order that the court can
54 determine if the property can be partitioned, so as to avoid
55 sale of the innocent party's portion or grant and afford
56 other relief by the court protective of the rights and
57 interests of such innocent party.

§11-10-13d. Sale of perishable goods.

1 If the tax commissioner determines that any property
2 seized is liable to perish or become greatly reduced in price
3 or value by keeping, or that such property cannot be kept
4 without great expense, he shall appraise the value of such
5 property and:

6 (a) *Return to owner.* — If the owner of the property can
7 be readily found, the tax commissioner shall give him notice
8 of such determination of the appraised value of the property.
9 The property shall be returned to the owner if, within such
10 time as may be specified in the notice, the owner either:

11 (1) Pays to the tax commissioner an amount equal to the
12 appraised value; or

13 (2) Gives bond in such form, with such sureties, and in
14 such amount as the tax commissioner shall prescribe, to pay
15 the appraised amount at such time as the tax commissioner
16 determines to be appropriate under the circumstances.

17 (b) *Immediate sale.* — If the owner does not pay such
18 amount or furnish such bond in accordance with this
19 subsection, the tax commissioner shall, as soon as
20 practicable, make public sale of the property in accordance
21 with such regulations as may be prescribed by the tax
22 commissioner.

§11-10-13e. Redemption of property.

1 (a) *Before sale.* — Any person whose property has been

2 levied upon shall have the right to pay the amount due,
3 together with the expenses of the proceeding, if any, to the
4 tax commissioner at any time prior to the sale thereof, and
5 upon such payment, the tax commissioner shall restore such
6 property to him, and all further proceedings in connection
7 with the levy on such property shall cease from the time of
8 such payment.

9 (b) *Redemption of real estate after sale.*

10 (1) *Period.* — The owners of any real property sold as
11 provided in section thirteen-c, their heirs, executors or
12 administrators, or any person having any interest therein,
13 or a lien thereon, or any person in their behalf, shall be
14 permitted to redeem the property sold, or any particular
15 tract of such property, at any time within one hundred
16 eighty days after the sale thereof.

17 (2) *Price.* — Such property or tract of property shall be
18 permitted to be redeemed upon payment to the purchaser,
19 or in case he cannot be found in the county in which the
20 property to be redeemed is situated, then to the tax
21 commissioner, for the use of the purchaser, his heirs or
22 assigns, the amount paid by such purchaser and interest
23 thereon at the rate specified in section seventeen-a, from
24 the date the purchaser paid the purchase price to the date
25 the property is redeemed.

26 (c) *Record.* — When any lands sold are redeemed as
27 provided in this section, the tax commissioner shall cause
28 entry of the fact to be made upon the record mentioned in
29 section thirteen-h and such entry shall be evidence of such
30 redemption.

31 (d) *Subrogation to state lien.* — Any person redeeming
32 the interest of another shall be subrogated to the lien of the
33 state on such interest. Such person shall lose his right to this
34 lien, however, unless within thirty days after receiving the
35 certificate of sale of personal property or the tax
36 commissioner's deed of real property, he shall file with the
37 clerk of the county in which the real property is located or of
38 the county in which the personal property is located or
39 where the delinquent taxpayer resides or has his business
40 location, or if neither be in this state, the clerk of Kanawha
41 County, his claim against the delinquent taxpayer and a
42 copy of the certificate of sale of personal property or deed to
43 real property.

§11-10-13f. Certificate of sale; deed to real property.

1 (a) *Certificate of sale.* — In the case of property sold as
2 provided in section thirteen-c the tax commissioner shall
3 provide to the purchaser a certificate of sale upon payment
4 in full of the purchase price. In the case of real property,
5 such certificate shall set forth the real property purchased,
6 for whose taxes the same was sold, the name of the
7 purchaser and the price paid therefor.

8 (b) *Deed to real property.* — In the case of any real
9 property sold as provided in section thirteen-c and not
10 redeemed in the manner and within the time provided in
11 section thirteen-e, the tax commissioner shall execute, in
12 accordance with the laws of this state pertaining to sales of
13 real property under execution, to the purchaser of such real
14 property at such sale, upon his surrender of the certificate
15 of sale, a deed to the real property so purchased by him
16 reciting the facts set forth in the certificate.

17 (c) *Real property purchased by the state.* — If real
18 property is declared purchased by the state of West Virginia
19 at a sale pursuant to section thirteen-c, the tax
20 commissioner shall, at the proper time, execute a deed
21 therefor, and without delay cause such deed to be duly
22 recorded in the office of the clerk of the county in which the
23 real property is located.

§11-10-13g. Legal effect of certificate of sale of personal property and deed of real property.

1 (a) *Certificate of sale of property other than real*
2 *property.* — In all cases of sale pursuant to section thirteen-
3 c of property (other than real property), the certificate of
4 such sale:

5 (1) *As evidence.* — Shall be prima facie evidence of the
6 right of the officer to make such sale, and conclusive
7 evidence of the regularity of his proceedings in making the
8 sale; and

9 (2) *As conveyances.* — Shall transfer to the purchaser
10 all right, title and interest of the party delinquent in and to
11 the property sold; and

12 (3) *As authority for transfer of corporate stock.* — If
13 such property consists of stocks, shall be notice, when
14 received, to any corporation, company or association of
15 such transfer, and shall be authority to such corporation,

16 company or association to record the transfer on its books
17 and records in the same manner as if the stocks were
18 transferred or assigned by the party holding the same, in
19 lieu of any original or prior certificate, which shall be void,
20 whether canceled or not; and

21 (4) *As receipts.* — If the subject of sale is securities or
22 other evidences of debt, shall be a good and valid receipt to
23 the person holding the same, as against any person holding
24 or claiming to hold possession of such securities or other
25 evidences of debt; and

26 (5) *As authority for transfer of title to motor vehicle.* —
27 If such property consists of a motor vehicle, shall be notice,
28 when title to received, to any public official charged with
29 the registration of title to motor vehicles, of such transfer
30 and shall be authority to such official to record the transfer
31 on his books and records in the same manner as if the
32 certificate of title to such motor vehicle has been
33 transferred or assigned by the party holding the same, in
34 lieu of any original or prior certificate, which shall be void,
35 whether canceled or not.

36 (b) *Deed of real property.* — In the case of the sale of real
37 property, pursuant to section thirteen-c:

38 (1) *Deed as evidence.* — The deed of sale given pursuant
39 to section thirteen-c shall be prima facie evidence of the
40 facts therein stated; and

41 (2) *Deed as conveyance of title.* — If the proceedings of
42 the tax commissioner as set forth have been substantially in
43 accordance with the provisions of law, such deed shall be
44 considered and operate as a conveyance of all the rights,
45 title and interest the party delinquent had in and to the real
46 property thus sold at the time the lien of the state of West
47 Virginia attached thereto.

48 (c) *Effect of junior encumbrances.* — A certificate of sale
49 of personal property given or a deed to real property
50 executed pursuant to section thirteen-f shall discharge such
51 property from all liens, encumbrances and titles over which
52 the lien of the state of West Virginia with respect to which
53 the levy was made had priority.

§11-10-13h. Records of sale.

1 (a) *Requirement.* — The tax commissioner shall, for
2 each county, keep a record of all sales of real property under

3 section thirteen-c and of redemptions of such property. The
4 record shall set forth the tax for which any such sale was
5 made, the dates of seizure and sale, the name of the party
6 assessed and all proceedings in making such sale, the
7 amount of expenses, the names of the purchasers and the
8 date of the deed.

9 (b) *Copy as evidence.* — A copy of such record, or any
10 part thereof, certified by the tax commissioner shall be
11 evidence in any court of this state of the truth of the facts
12 therein stated.

§11-10-13i. Expense of levy and sale.

1 The tax commissioner shall determine the expenses to be
2 allowed in all cases of levy and sale under this article.

§11-10-13j. Application of proceeds of levy.

1 (a) *Collection of liability.* — Any money realized from a
2 levy shall be applied as follows:

3 (1) *Expense of levy and sale.* — First, against the
4 expenses of the proceedings;

5 (2) *Liability of delinquent taxpayer.* — The amount, if
6 any, remaining after applying subdivision (1) shall then be
7 applied against the liability in respect of which the levy was
8 made or the sale conducted. The amount, if any, remaining
9 shall then be applied against any other delinquent tax
10 liability of the taxpayer for which levy may be made under
11 section thirteen.

12 (b) *Surplus proceeds.* — Any surplus proceeds
13 remaining after the application of subsection (a) shall, upon
14 application and satisfactory proof in support thereof, be
15 credited or refunded by the tax commissioner to the person
16 or persons legally entitled thereto.

§11-10-13k. Authority to release levy and return property.

1 (a) *Release of levy.* — It shall be lawful for the tax
2 commissioner, under regulations prescribed by him, to
3 release the levy upon all or part of the property or rights to
4 property levied upon where the tax commissioner
5 determines that such action will facilitate the collection of
6 the liability, but such release shall not operate to prevent a
7 subsequent levy.

8 (b) *Return of property.* — If the tax commissioner
9 determines that property has been wrongfully levied upon,

10 it shall be lawful for the tax commissioner to return:

11 (1) The specific property levied upon;

12 (2) An amount of money equal to the amount of money
13 levied upon; or

14 (3) An amount of money equal to the amount of money
15 received by the state of West Virginia from a sale of such
16 property. Property may be returned at any time. An amount
17 equal to the amount of money levied upon or received from
18 such sale may be returned at any time before the expiration
19 of nine months from the date of such levy. For purposes of
20 subdivision (3), if property is declared purchased by the state
21 of West Virginia at a sale pursuant to section thirteen-c
22 (relating to manner and conditions to sale), the state of West
23 Virginia shall be treated as having received an amount of
24 money equal to the minimum price determined pursuant to
25 such section or (if larger) the amount received by the state of
26 West Virginia from the resale of such property.

27 (c) The tax commissioner shall, upon request, make
28 public the names and persons in whose favor a release of
29 levy or return of property has been made in subsections (a)
30 and (b).

31 (d) *Interest.* — Interest shall be allowed and paid at an
32 annual rate established under section seventeen-a:

33 (1) In a case described in subdivision (2), subsection (b),
34 from the date the tax commissioner receives the money to
35 a date (to be determined by the tax commissioner) pre-
36 ceding the date of return by not more than thirty days; or

37 (2) In a case described in subdivision (3), subsection
38 (b), from the date of the sale of the property to a date
39 (to be determined by the tax commissioner) preceding the
40 date of return by not more than thirty days.

§11-10-15. Limitations on assessment.

1 (a) *General rule.* — The amount of any tax, additions to
2 tax, penalties and interest imposed by this article or any of
3 the other articles of this chapter to which this article is
4 applicable shall be assessed within three years after the
5 date the return was filed (whether or not such return was
6 filed on or after the date prescribed for filing): *Provided,*
7 That in the case of a false or fraudulent return filed with the
8 intent to evade tax, or in case no return was filed, the
9 assessment may be made at any time.

10 (b) *Time return deemed filed.*

11 (1) *Early return.* — For purposes of this section, a return
12 filed before the last day prescribed by law, or by regulations
13 promulgated by the tax commissioner for filing thereof,
14 shall be considered as filed on such last date;

15 (2) *Returns executed by tax commissioner.* — The
16 execution of a return by the tax commissioner pursuant to
17 the authority conferred by section five-c of this article, shall
18 not start the running of the period of limitations on
19 assessment and collection.

20 (c) *Exceptions.* — Notwithstanding subsection (a):

21 (1) *Extension by agreement.* — The tax commissioner
22 and the taxpayer may enter into written agreements to
23 extend the period within which the tax commissioner may
24 make an assessment against the taxpayer which shall not
25 exceed two years. The period so agreed upon may be
26 extended for additional periods not in excess of two years
27 each by subsequent agreements in writing made before the
28 expiration of the period previously agreed upon;

29 (2) *Deficiency in federal tax.* — Notwithstanding
30 subsection (a), in the event of a final determination by the
31 United States Internal Revenue Service or other competent
32 authority of a deficiency in the taxpayer's federal income
33 tax liability, the period of limitation, upon assessment of a
34 deficiency reflecting such final determinations in the net
35 income tax imposed by article twelve-a and the taxes
36 imposed by articles twenty-one and twenty-four of this
37 chapter, shall not expire until ninety days after the tax
38 commissioner is advised of the determination by the
39 taxpayer as provided in section six-a of said article twelve-
40 a, section fifty-nine of said article twenty-one and section
41 twenty of said article twenty-four, or until the period of
42 limitations upon assessment provided in subsection (a) has
43 expired, whichever expires the later, and regardless of the
44 tax year of the deficiency;

45 (3) *Special rule for certain amended returns.* — Where,
46 within the sixty-day period ending on the day on which the
47 time prescribed in this section for the assessment of any tax
48 for any taxable year would otherwise expire, the tax
49 commissioner receives a written document signed by the
50 taxpayer showing that the taxpayer owes an additional
51 amount of such tax for such taxable year, the period for the
52 assessment of such additional amount shall not expire

53 before the day sixty days after the day on which the tax
54 commissioner receives such document;

55 (4) *Net operating loss or capital loss carrybacks.* — In
56 the case of a deficiency attributable to the application by
57 the taxpayer of a net operating loss carryback or a capital
58 loss carryback (including that attributable to a
59 mathematical or clerical error in application of the loss
60 carryback) such deficiency may be assessed at any time
61 before expiration of the period within which a deficiency
62 for the taxable year of the net operating loss or net capital
63 loss which results in such carryback may be assessed;

64 (5) *Certain credit carrybacks.* — In the case of a
65 deficiency attributable to the application to the taxpayer of
66 a credit carryback (including that attributable to a
67 mathematical or clerical error in application of the credit
68 carryback) such deficiency may be assessed at any time
69 before expiration of the period within which a deficiency
70 for the taxable year of the unused credit which results in
71 such carryback may be assessed, or with respect to any
72 portion of a credit carryback from a taxable year
73 attributable to a net operating loss carryback, capital loss
74 carryback, or other credit carryback from a subsequent
75 taxable year, at any time before expiration of the period
76 within which a deficiency for such subsequent taxable year
77 may be assessed. The term “credit carryback” means any
78 carryback allowed under section eight, article one, chapter
79 five-e of this code;

80 (6) *Overpayment of tax credited against payment of*
81 *another tax.* — In the event of a final determination that a
82 taxpayer owes less tax than the amount paid by the
83 taxpayer, and the amount paid was allowed as a credit
84 against a tax administered under this article, the period of
85 limitation upon assessment of a deficiency in the payment
86 of such other tax due to the overstating of the allowable
87 credit, shall not expire until ninety days after the tax
88 commissioner receives written notice from the taxpayer
89 advising the tax commissioner of the final determination
90 reducing the taxpayer’s liability for a tax allowed as a
91 credit against a tax administered under this article, or until
92 the period of limitations upon assessment provided in
93 subsection (a) has expired, whichever expires the later, and
94 regardless of the tax year of the deficiency.

95 (d) *Cases under bankruptcy code.* — The running of
96 limitations provided in subsection (a), on the making of
97 assessments, or provided in section sixteen, on collection,
98 shall, in a case under title eleven of the United States code,
99 be suspended for the period during which the tax
100 commissioner is prohibited by reason of such case from
101 making the assessment or from collecting the tax and:

102 (1) For assessment, sixty days thereafter; and

103 (2) For collection, six months thereafter.

§11-10-17. Interest.

1 (a) *Underpayments.* — If any amount of a tax
2 administered under this article is not paid on or before the
3 last day prescribed for payment, interest on such amount at
4 the rate of eight percent per annum shall be paid for the
5 period from such last date to the date paid: *Provided*, That
6 on and after the first day of July, one thousand nine
7 hundred eighty-six, interest on underpayments shall be
8 paid at the annual rate established under section seventeen-
9 a from the period beginning on the said first day of July, or
10 from the last day prescribed for payment, whichever is the
11 later, to the date paid, regardless of when liability for the
12 tax arose. For purposes of this subsection, the last date
13 prescribed for payment shall be the due date of the return
14 and shall be determined without regard to any extension of
15 time for payment.

16 (b) *Last date for payment not otherwise prescribed.* —
17 In the case of taxes payable by stamp or other indicia of tax
18 payment and in all other cases in which the last date for
19 payment is not otherwise prescribed, the last date for
20 payment shall be deemed to be the date the liability for tax
21 arises and in no event shall be later than the date notice and
22 demand for payment of the tax is made by the tax
23 commissioner.

24 (c) *Erroneous refund or credit.* — If any refund is made
25 or credit is established upon an erroneous claim for refund
26 or credit, interest on such amount refunded or credited at
27 the annual rate established under section seventeen-a shall
28 be paid by the claimant from the date the refund was made
29 or the credit was taken to the date such amount is recovered.

30 (d) *Overpayments.* — Interest shall be allowed and paid
31 at the annual rate of eight percent per annum upon any
32 amount which has been finally administratively or
33 judicially determined to be an overpayment in respect of
34 each tax administered under this article except the taxes
35 imposed by articles twelve, fourteen and fourteen-a of this
36 chapter: *Provided*, That on and after the first day of July,
37 one thousand nine hundred eighty-six, interest on
38 overpayments shall be paid at the annual rate established
39 under section seventeen-a from said first day of July, or the
40 date the claim for refund or credit is filed, whichever is the
41 later, regardless of when the tax was paid. Such interest
42 shall be allowed and paid for the period commencing with
43 the date of the filing by the taxpayer of a claim for refund or
44 credit with the tax commissioner and ending with the date
45 of a final administrative or judicial determination of
46 overpayment. The tax commissioner shall, within thirty
47 days after such determination of entitlement to refund,
48 issue his requisition or establish a credit as requested by the
49 taxpayer. Whenever the tax commissioner fails or refuses to
50 issue any such requisition or establish such credit within
51 said thirty-day period, the interest provided herein shall
52 commence to accrue until performance by the tax
53 commissioner. The acceptance of such refund check or
54 credit shall be without prejudice to any right of the
55 taxpayer to claim any additional overpayment and interest
56 thereon.

57 (e) *Applicable rules.* — For purposes of this section:

58 (1) *No interest payable on tax refunded or credited*
59 *within ninety days after claim for refund or credit is filed.* —
60 In the event of the overpayment of any tax administered
61 under this article, except the tax imposed by articles
62 twenty-one and twenty-four of this chapter, where the tax
63 commissioner issues his requisition or establishes a credit
64 as requested by the taxpayer within ninety days after the
65 date of the filing by the taxpayer of a claim for refund or
66 credit, no interest shall be allowed under this section.

67 (2) *No interest payable where personal income tax and*
68 *corporation net income tax refunded or credited within six*
69 *months after claim for refund or credit is filed.* — In the
70 event of the overpayment of the tax imposed by articles
71 twenty-one and twenty-four of this chapter, where the tax

72 commissioner issues his requisition or establishes a credit
73 as requested by the taxpayer within six months after the
74 date of the filing by the taxpayer of a claim for refund or
75 credit, no interest shall be allowed under this section.

76 (3) *Interest treated as tax.* — Interest prescribed under
77 this section on any tax shall be collected and paid in the
78 same manner as taxes.

79 (4) *No interest on interest.* — No interest under this
80 section shall be imposed on the interest provided by this
81 section prior to the first day of July, one thousand nine
82 hundred eighty-six.

83 (5) *Interest on penalties or additions to tax.* — Interest
84 shall be imposed under subsection (a) on any assessable
85 penalty or additions to tax only if such penalty or additions
86 to tax is not paid within fifteen days from the date of notice
87 and demand therefor, and in such case interest shall be
88 imposed only for the period from the date of the notice and
89 demand to the date of payment.

90 (6) *Payments made within fifteen days after notice and*
91 *demand.* — If notice and demand is made for payment of any
92 amount, and if such amount is paid within fifteen days after
93 the date of such notice and demand, interest under this
94 section on the amount so paid shall not be imposed for the
95 period after the date of such notice and demand.

96 (7) *Limitation on collection.* — Interest prescribed
97 under this section on any tax may be collected at any time
98 during the period within which the tax to which such
99 interest relates may be collected.

100 (8) *Exception as to estimated tax.* — This section shall
101 not apply to any failure to pay any estimated tax required to
102 be paid under article thirteen, thirteen-c, thirteen-b,
103 twenty-one, twenty-three or twenty-four of this chapter.

§11-10-17a. Determination of rate of interest.

1 (a) *In general.* — The annual rate of interest established
2 under this section shall be such adjusted rate as is
3 established by the tax commissioner under subsection (b):
4 *Provided,* That such annual rate shall never be less than
5 eight percent per annum.

6 (b) *Adjustments of interest rate.*

7 (1) *Establishment of adjusted rate.* — If the adjusted
8 prime rate charged by banks (rounded to the nearest full
9 percent):

10 (A) During the six-month period ending on the thirtieth
11 day of September of any calendar year; or

12 (B) During the six-month period ending on the thirty-
13 first day of March of any calendar year, differs from the
14 interest rate in effect under this section on either such date,
15 respectively, then the tax commissioner shall establish,
16 within fifteen days after the close of the applicable six-
17 month period, an adjusted rate of interest equal to such
18 adjusted prime rate.

19 (2) *Effective date of adjustment.* — Any such adjusted
20 rate of interest established under subdivision (1) shall
21 become effective:

22 (A) On the first day of January of the succeeding year in
23 the case of an adjustment attributable to paragraph (1)(A)
24 above; and on

25 (B) The first day of July of the same year in the case of an
26 adjustment attributable to paragraph (1)(B).

27 (c) *Definition of "adjusted prime rate."* — For purposes
28 of subsection (b), the term "adjusted prime rate charged by
29 banks" means the average predominant prime rate quoted
30 by commercial banks to large businesses, as determined by
31 the board of governors of the Federal Reserve System.

32 (d) *Application of change in interest rate.*

33 (1) *To deficiencies.* — The interest rate in effect at the
34 time of assessment or when the payment of delinquent tax is
35 made shall not be applied retroactively to the date the tax
36 was due. Interest on moneys owed by the taxpayer shall be
37 the sum of the interest amounts calculated for each year or
38 part thereof from the date prescribed for payment
39 (determined without regard to any extensions) to the date
40 the payment is made using the interest rate in effect for each
41 respective year or part thereof.

42 (2) *To overpayments.* — The interest rate in effect at the
43 time an overpayment of tax is refunded, or a credit therefor
44 is established, by the tax commissioner, shall not be applied
45 retroactively to the date the claim for refund or credit was
46 filed with the tax commissioner. Interest on moneys owed to
47 taxpayers shall be the sum of the interest amounts
48 calculated for each year or part thereof from date the claim
49 for refund or credit was filed with the tax commissioner
50 until date the refund is paid or a credit therefor is
51 established (such dates determined as provided in section

52 seventeen) using the interest rate in effect for each
53 respective year or part thereof.

§11-10-18. Additions to tax.

1 (a) *Failure to file tax return or pay tax due.*

2 (1) In the case of failure to file a required return of any
3 tax administered under this article on or before the date
4 prescribed for filing such return (determined with regard to
5 any extension of time for filing), unless it is shown that such
6 failure is due to reasonable cause and not due to willful
7 neglect, there shall be added to the amount required to be
8 shown as tax on such return five percent of the amount of
9 such tax if the failure is for not more than one month, with
10 an additional five percent for each additional month or
11 fraction thereof during which such failure continues, not
12 exceeding twenty-five percent in the aggregate: *Provided,*
13 That this addition to tax shall be imposed only on the net
14 amount of tax due;

15 (2) In the case of failure to pay the amount shown as tax,
16 on any required return of any tax administered under this
17 article on or before the date prescribed for payment of such
18 tax (determined with regard to any extension of time for
19 payment), unless it is shown that such failure is due to
20 reasonable cause and not due to willful neglect, there shall
21 be added to the amount shown as tax on such return one half
22 of one percent of the amount of such tax if the failure is for
23 not more than one month, with an additional one half of one
24 percent for each additional month or fraction thereof
25 during which such failure continues, not exceeding twenty-
26 five percent in the aggregate: *Provided,* That the addition to
27 tax shall be imposed only on the net amount of tax due;

28 (3) In the case of failure to pay any amount in respect to
29 any tax required to be shown on a return specified in
30 subdivision (1) which is not so shown within fifteen days of
31 the date of notice and demand therefor, unless it is shown
32 that such failure is due to reasonable cause and not due to
33 willful neglect, there shall be added to the amount of tax
34 stated in such notice and demand one half of one percent of
35 the amount of each tax if the failure is for not more than one
36 month, with an additional one half of one percent for each
37 additional month or fraction thereof during which such
38 failure continues, not exceeding twenty-five percent in the

39 aggregate: *Provided*, That this addition to tax shall be
40 imposed only on the net amount of tax due.

41 (b) *Limitation and special rule.*

42 (1) Additions under more than one paragraph:

43 (A) With respect to any return, the amount of the
44 addition under subdivision (1) of subsection (a) shall be
45 reduced by the amount of the addition under subdivision
46 (2) of subsection (a) for any month to which an addition
47 to tax applies under both subdivisions (1) and (2);

48 (B) With respect to any return, the maximum amount of
49 the addition permitted under subdivision (3) of subsection
50 (a) shall be reduced by the amount of the addition under
51 subdivision (1) of subsection (a) (determined without regard
52 to the last sentence of such subsection) which is attributable
53 to the tax for which the notice and demand is made and
54 which is not paid within fifteen days of notice and demand.

55 (2) *Amount of tax shown more than amount required to*
56 *be shown.* — If the correct amount of tax due is less than the
57 amount shown on the return, subdivisions (1) and (2) of
58 subsection (a) shall only apply to the lower amount.

59 (3) *Exception for estimated tax.* — Subsection (a) shall
60 not apply to any failure to pay any estimated tax.

61 (c) *Negligence or intentional disregard of rules and*
62 *regulations.* — If any part of any underpayment of any tax
63 administered under this article is due to negligence or
64 intentional disregard of rules and regulations (but without
65 intent to defraud), there shall be added to the amount of tax
66 due five percent of the amount of such tax if the
67 underpayment due to negligence or intentional disregard of
68 rules and regulations is for not more than one month, with
69 an additional five percent for each additional month or
70 fraction thereof during which such underpayment
71 continues, not exceeding twenty-five percent in the
72 aggregate: *Provided*, That these additions to tax shall be
73 imposed only on the net amount of tax due and shall be in
74 lieu of the additions to tax provided for in subsection (a),
75 and the tax commissioner shall state in his notice of
76 assessment the reason or reasons for imposing this addition
77 to tax with sufficient particularity to put the taxpayer on
78 notice regarding why it was assessed.

79 (d) *False or fraudulent return.* — In the case of the filing
80 of any false or fraudulent return with intent to evade any

81 such tax, or in the case of willful failure to file a return with
82 intent to evade tax, there shall be added to the tax due an
83 amount equal to fifty percent thereof which shall be in lieu
84 of the additions to tax provided for in subsections (a) and
85 (c). The burden of proving fraud, willfulness or intent to
86 evade tax shall be upon the tax commissioner. In the case of
87 a joint personal income tax return under article twenty-one
88 of this chapter, this subsection shall not apply with respect
89 to the tax of the spouse unless some part of the
90 underpayment is due to the fraud of such spouse.

91 (e) *Additions to tax treated as tax.* — Additions to tax
92 prescribed under this section on any tax shall be assessed,
93 collected and paid in the same manner as taxes.

§11-10-18a. Additions to tax for failure to pay estimated tax.

1 (a) *Addition to tax.* — Except as provided in subsections
2 (d) and (e), in the case of any underpayment of estimated
3 tax, there shall be added to the tax due for the taxable year,
4 under any article administered by this article, an amount
5 determined at the rate established under section seventeen
6 or seventeen-a of this article, on the amount of the
7 underpayment of estimated tax for the period of
8 underpayment.

9 (b) *Amount of underpayment.* — For purposes of
10 subsection (a), the amount of the underpayment shall be in
11 excess of:

12 (1) The amount of the installment which would be
13 required to be paid if the estimated tax were an amount
14 equal to ninety percent of the tax shown on the return for
15 the taxable year, or if no return was filed, ninety percent of
16 the tax for such year, over

17 (2) The amount, if any, of the installments paid on or
18 before the last date prescribed for payment.

19 (c) *Period of underpayment.* — The period of
20 underpayment shall run from the date the installment was
21 required to be paid to whichever of the following dates is
22 the earlier:

23 (1) The due date of the annual return following the close
24 of the taxable year for which the installment was due;

25 (2) With respect to any portion of the underpayment, the
26 date on which such portion is paid. For purposes of this
27 subdivision, a payment of estimated tax on any installment

28 shall be considered a payment of any previous
29 underpayment only to the extent such payment exceeds the
30 amount of the installment determined under subdivision
31 (1), subsection (b) for such installment date.

32 (d) *Exception.* — Notwithstanding the provisions of the
33 preceding subsections, the additions to tax with respect to
34 any underpayment of any installment shall not be imposed
35 if the total amount of all payments of estimated tax made on
36 or before the last date prescribed for the payment of such
37 installment equals or exceeds the amount which would
38 have been required to be paid on or before such date if the
39 estimated tax were whichever of the following is lesser:

40 (1) *Prior year's tax.* — The tax shown on the return of
41 the taxpayer for the preceding taxable year, if a return
42 showing a liability for tax was filed by the taxpayer for the
43 preceding taxable year and such preceding year was a
44 taxable year of twelve months;

45 (2) *Prior year's facts.* — An amount equal to the tax
46 computed at the rates applicable to the current taxable
47 year, but otherwise on the basis of the facts shown on the
48 return of the taxpayer for, and the law applicable to, the
49 preceding taxable year;

50 (3) *Annualized tax.*

51 (A) An amount equal to ninety percent of the tax for the
52 current taxable year computed by placing on an annualized
53 basis the taxable income:

54 (i) For the first three months of the taxable year, in the
55 case of the installment required to be paid in the third or
56 fourth month;

57 (ii) For the first three months of the first five months of
58 the taxable year, in the case of the installment required to
59 be paid in the sixth month;

60 (iii) For the first six months or the first eight months of
61 the taxable year, in the case of the installment required to
62 be paid in the ninth month; and

63 (iv) For the first nine months or for the first eleven
64 months of the taxable year, in the case of the installment
65 required to be paid in the twelfth month of the taxable year
66 or the first month of the next succeeding taxable year.

67 (B) For purposes of this subdivision (3), the taxable
68 income shall be placed on an annualized basis by:

69 (i) Multiplying by twelve the taxable income referred to
70 in subparagraph (A); and

71 (ii) Dividing the resulting amount by the number of
72 months in the taxable year (three, five, six, eight, nine or
73 eleven, as the case may be) referred to in subparagraph (A).
74 (e) *Short taxable year.* — The application of this section
75 to taxable years of less than twelve months shall be in
76 accordance with regulations prescribed by the tax
77 commissioner.

ARTICLE 10B. TAX PENALTY AND ADDITIONS TO TAX AMNESTY.

- §11-10B-1. Legislative intent.
- §11-10B-2. Definitions.
- §11-10B-3. Development and administration of program, implementation of article.
- §11-10B-4. Duration and application of program.
- §11-10B-5. Waiver of penalties; criminal immunity; exceptions and limitations.
- §11-10B-6. Application for amnesty; requirements; deficiency assessment.
- §11-10B-7. Publicity efforts.
- §11-10B-8. Disposition of revenue collected.

§11-10B-1. Legislative intent.

1 It is the intent of the Legislature in enacting the tax
2 penalty and additions to tax amnesty program, as provided
3 by this article, to improve compliance with this state's tax
4 laws and to accelerate and increase collections of certain
5 taxes currently owed to this state. The Legislature finds and
6 declares that a public purpose is served by the waiver of tax
7 penalties, additions to tax and criminal prosecution in
8 return for the immediate reporting and payment of
9 previously underreported, nonreported, unpaid or
10 underpaid tax liabilities which accrued prior to or are
11 delinquent as of the first day of January, one thousand nine
12 hundred eighty-six. The benefits gained by this program
13 include, among other things, accelerated receipt of certain
14 currently owed taxes, permanently bringing into the tax
15 system taxpayers who have been evading tax and providing
16 an opportunity for taxpayers to clear their records and
17 satisfy tax obligations. It is further the intent of the
18 Legislature in enacting this article that the tax penalty and
19 additions to tax amnesty program be a one-time occurrence
20 which shall not be repeated in the future, since taxpayers'
21 expectations of future amnesty programs could have a
22 counterproductive effect on compliance today.

§11-10B-2. Definitions.

1 (a) *General rule.* — Terms used in this article shall have
2 the meaning ascribed to them in section four, article ten of
3 this chapter, unless the context in which the term is used in
4 the article clearly requires a different meaning, or the term
5 is defined in subsection (b) of this section.

6 (b) *Terms defined.* — For purposes of this article, the
7 term:

8 (1) "Additions to tax" shall mean that amount imposed
9 by section eighteen, or eighteen-a, article ten of this
10 chapter, for failure to file a return or pay tax due, or for
11 negligence or intentional disregard of rules and regulations
12 of the tax commissioner, for filing a false or fraudulent
13 return, or for failure to pay estimated tax, and includes
14 "additions to tax" imposed by articles fourteen, fourteen-a,
15 seventeen, nineteen, twenty-one and twenty-four of this
16 chapter, as in effect on the thirtieth day of June, one
17 thousand nine hundred seventy-eight, and preserved in
18 section twenty, article ten of this chapter, for periods
19 ending on or before that date;

20 (2) "Applicant" shall mean any person who timely files
21 an application for amnesty under this article;

22 (3) "Penalty" shall mean and include additions to tax,
23 penalties imposed by section nineteen, article ten of this
24 chapter, penalties imposed by articles eleven, twelve,
25 thirteen, fourteen, fourteen-a, fifteen, fifteen-a, seventeen,
26 nineteen, twenty-one or twenty-four of this chapter, as such
27 articles are presently written or as in effect on the thirtieth
28 day of June, one thousand nine hundred seventy-eight, and
29 preserved in section twenty, article ten of this chapter, for
30 periods ending on or before that date;

31 (4) "Specified tax" shall mean the tax or taxes and the
32 periods thereof for which the taxpayer applies for amnesty
33 under this article.

**§11-10B-3. Development and administration of program,
implementation of article.**

1 The tax commissioner shall develop and administer the
2 tax penalty and additions to tax amnesty program as
3 provided in this article, and shall develop and issue such
4 forms, instructions, regulations and guidelines as he deems

5 to be necessary, and take any other action needed to
6 implement this article.

§11-10B-4. Duration and application of program.

1 The tax commissioner shall establish a three-month tax
2 penalty and additions to tax amnesty program to be
3 conducted during the calendar year, one thousand nine
4 hundred eighty-six. The program shall apply to payments
5 and returns required pursuant to any tax specified in
6 section three, article ten of this chapter, but only if the
7 obligation for payment or filing of a return, or both, arose
8 prior to, is delinquent as of, or is due and payable as of the
9 first day of January, one thousand nine hundred eighty-six.

**§11-10B-5. Waiver of penalties; criminal immunity;
exceptions and limitations.**

1 (a) For any taxpayer who meets the requirements of
2 section six below, and except as otherwise specifically
3 provided in this article.

4 (1) The tax commissioner shall waive all penalties, as
5 defined in section two of this article, and all additions to
6 tax, as defined in said section two, for the taxes for which
7 tax penalty and additions to tax amnesty is granted, which
8 are owed as a result of nonpayment, underpayment,
9 nonreporting or underreporting of tax liabilities; and

10 (2) No criminal action may be brought against the
11 taxpayer for the default for which tax penalty and
12 additions to tax amnesty is granted.

13 (b) This section does not apply to nonpayment,
14 underpayment, nonreporting, misreporting or
15 underreporting of tax liabilities for which amnesty is
16 sought if, as of the date the taxpayers' application for
17 amnesty is filed:

18 (1) The taxpayer is the subject of a criminal
19 investigation by any agency of this state; or

20 (2) An administrative proceeding, or a civil or criminal
21 court proceeding has been initiated or is pending in any
22 administrative agency or court of this state or of the United
23 States for nonpayment, delinquency, fraud or other event of
24 noncompliance in relation to any of the specified taxes. An
25 administrative or civil proceeding shall not be deemed to be

26 pending if the taxpayer withdraws with prejudice from the
27 proceeding prior to the granting of amnesty, pays in full the
28 outstanding tax liability plus the accrued interest thereon
29 and otherwise cures any default which is the subject of such
30 proceeding.

31 (c) No refund or credit may be granted for any penalty
32 or addition to tax paid prior to the time the taxpayer files
33 his application for tax penalty and additions to tax amnesty
34 pursuant to section six below. Additionally, no refund or
35 credit shall be granted for any specified taxes plus interest
36 paid under this program unless the tax commissioner, on his
37 own motion, redetermines the amount of tax and accrued
38 interest thereon.

39 (d) The taxpayer shall not be eligible for amnesty for
40 any tax liability if the taxpayer has other liabilities
41 outstanding for a tax listed in section three, article ten of
42 this chapter, for which he has not applied for amnesty.

§11-10B-6. Application for amnesty; requirements; deficiency assessment.

1 (a) The provisions of this article apply to any taxpayer
2 who, on or after the date of commencement of the tax
3 penalty and additions to tax amnesty program and on or
4 before the termination date designated by the tax
5 commissioner, files an application for tax penalty and
6 additions to tax amnesty on or before the last day of the
7 third calendar month of the amnesty program and does the
8 following:

9 (1) Voluntarily completes, signs and files amended tax
10 returns to report transactions and other material matters
11 not included on original returns and pays in full all
12 additional taxes and interest shown to be due thereon;

13 (2) Voluntarily completes, signs and files all delinquent
14 tax returns and pays in full all taxes and interest shown to
15 be due thereon;

16 (3) Voluntarily completes, signs and files amended tax
17 returns to correct all incorrect, deficient or incomplete
18 original returns and pays in full all taxes and interest shown
19 to be due thereon; and

20 (4) Voluntarily pays in full all previously assessed tax
21 liabilities and other taxes legally collectible under section
22 eleven, article ten of this chapter, and interest due thereon.

23 (b) Except as provided in subsection (d) below, all taxes
24 for which tax penalty and additions to tax amnesty is
25 sought plus accrued interest shall be paid not later than the
26 last day of the month next succeeding the termination of the
27 amnesty program. Interest on the amount of tax due shall be
28 calculated at the rate prescribed in article ten of this
29 chapter, which continues to accrue until the tax liability is
30 paid.

31 (c) Payments made by the taxpayer under this tax
32 penalty and additions to tax amnesty program shall be in
33 money, United States currency or by certified check,
34 cashier's check or post office money order, payable to the
35 tax commissioner of this state.

36 (d) The tax commissioner may, at his discretion and
37 upon such terms and conditions as he may prescribe, enter
38 into an installment payment agreement with the taxpayer,
39 such installment payment agreement to be in lieu of the full
40 immediate payment required by subsection (b) of this
41 section. Any such agreement shall include interest on the
42 outstanding amount due. Failure of the taxpayer to fully
43 comply with the terms of the installment payment
44 agreement shall render the waiver of penalties and
45 additions to tax under this amnesty program null and void,
46 unless the tax commissioner determines that the failure was
47 due to reasonable cause, and, in the event of such unexcused
48 noncompliance with the terms of the installment payment
49 agreement, the total amount of tax, interest and all
50 additions to tax and penalties shall be immediately due and
51 payable.

52 (e) If, subsequent to termination of the tax penalty and
53 additions to tax amnesty program, the tax commissioner
54 determines there was a defect in the amnesty application or
55 in the materials submitted in support of the amnesty
56 application and subsequently issues a deficiency
57 assessment upon a return or amended return filed pursuant
58 to subsection (a) of this section, the tax commissioner has
59 the authority to impose applicable penalties and additions
60 to tax and to pursue any criminal prosecution as may
61 ordinarily be brought with respect to such defect as if no
62 amnesty had been granted the taxpayer.

63 (f) The tax commissioner may review all cases in which
64 amnesty has been granted and may on the basis of mistake

65 of fact, fraud or misrepresentation rescind the grant of
66 amnesty, or in lieu thereof, appropriate review of the grant
67 of amnesty may be obtained by proceeding under article
68 nine or ten (or both) of this chapter. Any taxpayer who files
69 a false or fraudulent return or amended return, or attempts
70 in any manner to defeat or evade payment of a tax under
71 this amnesty program, shall be subject to applicable civil
72 penalties and criminal prosecution.

§11-10B-7. Publicity efforts.

1 The tax commissioner shall cause the tax penalty and
2 additions to tax amnesty program to be adequately
3 publicized so as to maximize public awareness of and
4 participation in the program.

§11-10B-8. Disposition of revenue collected.

1 From the revenue collected under this tax penalty and
2 additions to tax amnesty program, four million dollars of
3 revenue collected, the disposition of which is not otherwise
4 dedicated by constitutional provision or prior statutory
5 enactment, shall be paid by the tax commissioner into a
6 special "disaster recovery fund," which is hereby created in
7 the state treasurer's office to be used as appropriated by the
8 Legislature for the recovery of losses occurring in the
9 November, one thousand nine hundred eighty-five, flood
10 disaster in twenty-nine counties of this state. The tax
11 commissioner shall retain the amount of two hundred
12 thousand dollars to cover his costs of administering this
13 program. All additional revenues collected by the tax
14 commissioner under the provisions of this article, the
15 disposition of which is not otherwise dedicated by
16 constitutional provision or prior statutory enactment, shall
17 be paid by him into the general fund.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-1. Short title.

§11-12-2. Definitions.

§11-12-3. Business registration certificate; required; tax levied; exemption from tax.

§11-12-4. Application for business registration certificate; issuance of business certificate; effect of business certificate; municipal license taxes.

§11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.

- §11-12-19. Contractors.
- §11-12-20. Registration of transient vendors.
- §11-12-21. Bond of transient vendors.
- §11-12-22. Notification to department.
- §11-12-23. Revocation of certificate of transient merchant.
- §11-12-24. Seizure of property of transient vendor.
- §11-12-25. Severability.
- §11-12-26. Interpretation of preceding sections.

§11-12-1. Short title.

- 1 This article shall be cited as the “Business Registration
- 2 Tax.”

§11-12-2. Definitions.

- 1 (a) *General rule.* — Terms used in this article shall have
- 2 the meaning ascribed to them in section four, article ten of
- 3 this chapter, unless the context in which the term is used in
- 4 this article clearly requires a different meaning, or the term
- 5 is defined in subsection (b) of this section.

- 6 (b) *Terms defined.* — For purposes of this article, the
- 7 term:

- 8 (1) “Agriculture and farming” shall mean and include
- 9 the production of food, fiber, or woodland products (but not
- 10 timbering activity) by means of cultivation or tillage of the
- 11 soil, or by the conduct of animal, livestock, dairy, apiary,
- 12 equine or poultry husbandry, or by horticulture, or by any
- 13 other plant or animal production, and all farm practices
- 14 related (usual or incidental) thereto, including the storage,
- 15 packing, shipping and marketing thereof, but not including
- 16 any manufacturing, milling, processing or selling of such
- 17 products by person other than the producer thereof.

- 18 For the purposes of this article:

- 19 (2) “Business activity” shall mean and include all
- 20 purposeful revenue-generating activity engaged in or
- 21 caused to be engaged in with the object of gain or economic
- 22 benefit, either direct or indirect, and all activities of this
- 23 state and its political subdivisions which involve the sale of
- 24 tangible personal property or the rendering of service when
- 25 such service activities compete with or may compete with
- 26 the activities of another person. “Business activity” shall
- 27 not include:

- 28 (A) Judicial sales directed by law or court order.

- 29 (B) Sales for delinquent taxes of real or personal
- 30 property.

31 (C) The conduct of charitable bingo by any person
32 licensed under article twenty, chapter forty-seven of this
33 code.

34 (D) The conduct of a charitable raffle by any person.

35 (E) The conduct of a horse or dog race meeting by any
36 racing association licensed under article twenty-three,
37 chapter nineteen of this code.

38 (F) The operation or maintenance of the pari-mutuel
39 system of wagering during the conduct of a licensed horse or
40 dog race meeting.

41 (G) The sale of any commodity during the conduct of a
42 licensed horse or dog race meeting.

43 (H) The services of owners, trainers or jockeys which are
44 essential to the effective conduct of a licensed horse or dog
45 race meeting.

46 (I) Occasional or casual sales of property or services.

47 (3) "Business registration certificate" shall mean a
48 certificate issued by the tax commissioner authorizing a
49 person to conduct business within the state of West
50 Virginia; and when referred to in this chapter as a
51 certificate of registration or a business franchise
52 registration certificate, it shall mean a business registration
53 certificate.

54 (4) "Occasional sale" or "casual sale" shall mean a sale
55 of tangible personal property not held or used by a seller in
56 the course of an activity for which a business registration
57 certificate is required, including the sale or exchange of all
58 or substantially all the assets of any business and the
59 reorganization or liquidation of any business: *Provided,*
60 That such sale or exchange is not one of a series of sales or
61 exchanges sufficient in number, scope and character to
62 constitute a business activity requiring the holding of a
63 business registration certificate.

64 (5) "Person" or "company" shall mean and include any
65 individual, firm, copartnership, joint venture, association,
66 corporation, estate, trust, business trust, receiver,
67 syndicate, club, society, or other group or combination
68 acting as a unit, or body politic or political subdivision
69 (whether public or private, or quasi-public) and in the
70 plural thereof as well as the singular, and when used in
71 connection with the penalties imposed by section nine of
72 this article shall mean and include the officers, directors,

73 trustees, or members of any firm, copartnership, joint
74 venture, association, corporation, trust, business trust,
75 syndicate or any other groups or combinations acting as a
76 unit.

77 (6) "Registration year" shall mean a period of twelve
78 calendar months beginning the first day of July and ending
79 the thirtieth day of the following June.

80 (7) "Registrant" shall mean any person who has been
81 issued a business registration certificate under this article
82 for the current registration year.

83 (8) "Tax commissioner" shall mean the tax
84 commissioner or his agent.

**§11-12-3. Business registration certificate required; tax levied;
exemption from tax.**

1 (a) *Registration required.* — No person shall, without a
2 business registration certificate, engage in or prosecute, in
3 the state of West Virginia, any business activity without
4 first obtaining a business registration certificate from the
5 tax commissioner of the state of West Virginia.
6 Additionally, before beginning business in this state, such
7 person:

8 (1) If a transient vendor, shall comply with the
9 provisions of sections twenty through twenty-five of this
10 article.

11 (2) If a collection agency, shall comply with the
12 provisions of article sixteen, chapter forty-seven of this
13 code.

14 (3) If an employment agency, shall comply with the
15 provisions of article two, chapter twenty-one of this code.

16 (4) If selling drug paraphernalia, as defined in section
17 three, article nineteen, chapter forty-seven of this code,
18 shall comply with the provisions of article nineteen, chapter
19 forty-seven of this code.

20 Persons engaging in or prosecuting other business
21 activities in this state may also be subject to other
22 provisions of this code which they must satisfy before
23 commencing or while engaging in a business activity in this
24 state.

25 (b) *Tax levied.* — The business registration tax hereby
26 levied shall be fifteen dollars for each business registration
27 certificate.

28 (1) A separate business registration certificate is
29 required for each fixed business location from which
30 property or services are offered for sale or lease to the public
31 as a class, or to a limited portion of the public; or at which
32 customer accounts may be opened, closed or serviced.

33 (2) A separate business registration certificate is not
34 required for each coin-operated machine. A separate
35 certificate is required for each location from which making
36 coin-operated machines available to the public is itself a
37 business activity.

38 (3) A business that sells tangible personal property or
39 services from or out of one or more vehicles needs a separate
40 business registration certificate for each fixed location in
41 this state from or out of which business is conducted. A copy
42 of its business registration certificate shall be carried in
43 each vehicle and publicly displayed while business is
44 conducted from or out of the vehicle.

45 (4) A business registration certificate is required by
46 subsection (a) for every person engaging in purposeful
47 revenue generating activity in this state. If that activity is
48 one for which an employment agency license or a collection
49 agency license or a license to sell drug paraphernalia is
50 required and no other business activity is conducted by that
51 person at each business location for which the employment
52 agency license or collection agency license or license to sell
53 drug paraphernalia is issued, then only that license is
54 required for each such activity conducted by the licensee at
55 each business location. However, if in addition to the
56 activity for which each license is issued, some other
57 business activity is conducted by the licensee at such
58 business location, a separate business registration
59 certificate is required to conduct the nonlicensed activity.

60 (c) *Exemptions from payment of tax.* — The following
61 persons are not required to obtain a business registration
62 certificate, and are exempt from payment of the tax levied
63 by subsection (b);

64 (1) Any person who had gross income from business
65 activity of four thousand dollars or less during that person's
66 tax year for state income tax purposes immediately
67 preceding the registration year for which a registration
68 certificate is required under this article.

69 (2) Any organization which qualifies, or would qualify,

70 for exemption from federal income taxes under section 501
71 of the Internal Revenue Code of 1954, as amended.

72 (3) Activities of this state and its political subdivisions
73 which involve sales of tangible personal property,
74 admissions or services, when those service activities
75 compete with or may compete with the activities of another
76 person.

77 (4) Activities of the United States, its agencies or
78 instrumentalities which are exempt from taxation by the
79 states.

80 (5) Any person engaged in the business of agriculture
81 and farming.

82 (6) Any foreign retailer who is not a "retailer engaging
83 in business in this state" as defined in section one, article
84 fifteen-a of this chapter, who enters into an agreement with
85 the tax commissioner to voluntarily collect and remit use
86 tax on sales to West Virginia customers.

**§11-12-4. Application for business registration certificate;
issuance of business certificate; effect of business
certificate; municipal license taxes.**

1 (a) *General rule.* — Except as otherwise provided in this
2 article, a person shall register with the tax commissioner
3 prior to engaging in or prosecuting any business activity in
4 this state. The application for business registration shall be
5 in such form and contain such information as the tax
6 commissioner may require; and the applicant shall set forth
7 truthfully and accurately the information required by the
8 tax commissioner. Upon receipt of a complete and properly
9 executed application form, accompanied by payment of (or
10 claim of exemption from) the tax levied by section three for
11 each business registration certificate, the tax commissioner
12 shall, if he determines to his satisfaction that all of the
13 conditions precedent to the granting of such certificate
14 have been fulfilled by the applicant, issue such business
15 registration certificate or certificates.

16 (b) *Certificate not to validate illegal activity.* — Nothing
17 in this article, including, but not limited to, any payment of
18 the tax imposed or issuance of any certificate of registration
19 under the provisions hereof, shall be deemed to legalize any
20 act, business activity or transaction which otherwise may
21 be illegal or conducted in violation of law; or to exempt any

22 person from any civil or criminal penalty prescribed for
23 such illegal act or violation.

24 (c) *Certificate not to be construed as consent to general*
25 *tax jurisdiction of this state.* — The filing of an application
26 for business registration certificate (or for renewal thereof)
27 and payment of the tax imposed by section three shall not be
28 construed by the tax commissioner or the courts of this state
29 as consent, submission or admission by the registrant to the
30 general taxing jurisdiction of this state, and liability for
31 such other taxes imposed by this state shall depend upon
32 the relevant facts in each case and the applicable law.

33 (d) *Power of municipalities to impose license taxes*
34 *preserved.* — Notwithstanding the repeal, as of the first day
35 of July, one thousand nine hundred seventy, of certain
36 license taxes then imposed by this article and article
37 thirteen-a of this chapter, the power of a municipality to
38 impose similar license taxes, by ordinance adopted
39 pursuant to the authority of its charter or this code, was and
40 is preserved: *Provided*, That the municipal license taxes
41 imposed on any business, activity, trade or employment
42 that was previously subject to a state license tax under this
43 article or article thirteen-a of this chapter, cannot exceed
44 the state license tax in effect on such business, activity,
45 trade or employment of the first day of January, one
46 thousand nine hundred seventy; and municipalities shall
47 have the power to impose similar penalties as those then
48 provided in this article and article thirteen-a of this chapter
49 for noncompliance with such state license taxes.

**§11-12-5. Time for which registration certificate granted;
power of tax commissioner to suspend or cancel
certificate; refusal to renew.**

1 (a) *Registration year.* — All business registration
2 certificates issued under the provisions of section four of
3 this article shall be for a period of one year beginning the
4 first day of July and ending the thirtieth day of the
5 following June.

6 (b) *Revocation or suspension of certificate.*

7 (1) The tax commissioner may cancel or suspend a
8 business registration certificate at any time during a
9 registration year if:

10 (A) The registrant filed an application for a business

11 registration certificate, or an application for renewal
12 thereof, for the registration year that was false or
13 fraudulent.

14 (B) The registrant willfully refused or neglected to file
15 any tax return or to report information required by the tax
16 commissioner for any tax imposed by or pursuant to this
17 chapter.

18 (C) The registrant willfully refused or neglected to pay
19 any tax, additions to tax, penalties or interest, or any part
20 thereof, when they become due and payable under this
21 chapter, determined with regard to any authorized
22 extension of time for payment.

23 (D) The registrant neglected to pay over to the tax
24 commissioner on or before its due date, determined with
25 regard to any authorized extension of time for payment, any
26 tax imposed by this chapter which the registrant collects
27 from any person and holds in trust for this state.

28 (E) The registrant abused the privilege afforded to it by
29 article fifteen or fifteen-a of this chapter to be exempt from
30 payment of the taxes imposed by such articles on some or all
31 of the registrant's purchases for use in business upon
32 issuing to the vendor a properly executed exemption
33 certificate, by failing to timely pay use tax on taxable
34 purchase for use in business, or by failing to either pay the
35 tax or give a properly executed exemption certificate to the
36 vendor.

37 (2) Before canceling or suspending any such certificate,
38 the tax commissioner shall give written notice of his intent
39 to suspend or cancel the business registration certificate of
40 the taxpayer, the reason for the suspension or cancellation,
41 the effective date of the cancellation or suspension, and the
42 date, time and place where the taxpayer may appear and
43 show cause why such business registration certificate
44 should not be canceled or suspended. This written notice
45 shall be served on the taxpayer in the same manner as a
46 notice of assessment is served under article ten of this
47 chapter, not less than twenty days prior to the hearing date.
48 Such hearing shall be held as provided in section nine of
49 said article ten, and the provisions of section ten of said
50 article ten shall apply to any appeal of the administrative
51 decision issued under section nine of that article: *Provided,*
52 That the filing of a petition for appeal with a court having

53 jurisdiction to hear the appeal shall not stay the effective
54 date of the suspension or cancellation. A court may order a
55 stay, after a hearing is held on any motion to stay filed by
56 the registrant, upon finding that the state revenues will not
57 be jeopardized by the granting of the stay. The tax
58 commissioner may, in his discretion and upon such terms as
59 he may specify, agree to stay the effective date of the
60 cancellation or suspension until another date certain.

61 (c) *Refusal to renew.* — The tax commissioner may
62 refuse to issue or renew a business registration certificate if
63 the registrant is delinquent in the payment of any tax
64 administered by the tax commissioner under article ten of
65 this chapter or the corporate license tax imposed by this
66 article, until the registrant pays in full all such delinquent
67 taxes including interest and applicable additions to tax and
68 penalties. In his discretion and upon such terms as he may
69 specify, the tax commissioner may enter into an installment
70 payment agreement with such taxpayer in lieu of the
71 complete payment. Failure of the taxpayer to fully comply
72 with the terms of the installment payment agreement shall
73 render the amount remaining due thereunder immediately
74 due and payable and the tax commissioner may suspend or
75 cancel the business registration certificate in the manner
76 hereinbefore provided.

§11-12-19. Contractors.

1 (a) *General.* — Every person who engages in this state in
2 any contracting business or activity shall have a copy of his
3 business registration certificate available at every
4 construction site in this state until his work at such site is
5 completed.

6 (b) *Definitions.* — For purposes of this section:

7 (1) "Contracting business or activity" means and
8 includes the furnishing of work, or both work and materials
9 for the erecting, building, constructing, altering, repairing,
10 removing or demolishing of any building or other structure,
11 or other improvement appurtenant to any such building or
12 other structure, or for altering, improving or developing of
13 property, under and by virtue of a contract with the owner
14 for an agreed lump sum or upon any other basis of
15 settlement and payment agreed to by the parties, whether
16 such contract be an oral agreement or in writing. The term

17 “contracting business or activity” shall also include the
18 furnishing of work or both work and materials or
19 equipment under and by virtue of a subcontract with a
20 general contractor for an agreed contract price, or by day,
21 or by piece, or by other basis of payment agreed to by
22 parties, whether such contract be an oral agreement or in
23 writing.

24 (2) “Contractor” means every person, including a
25 subcontractor, who agrees by a written or oral contract to
26 engage in contracting activity.

27 (3) “Construction site” means the area in which the
28 contractor is working or beginning to work when engaging
29 in contracting activity.

30 (c) *Penalty for failure to have available.* — In addition
31 to other penalties provided by law, any contractor who
32 fails to have available at the construction site during the
33 time he is furnishing contracting activity at such site, his
34 business registration certificate or a copy thereof, shall
35 not be entitled to enforce the mechanics’ lien created by
36 section one or two, article two, chapter thirty-eight of this
37 code, for contracting activity provided by him at such
38 construction site.

§11-12-20. Registration of transient vendors.

1 (a) Prior to conducting business or otherwise
2 commencing operations within this state, a transient
3 vendor shall obtain a business registration certificate from
4 the tax commissioner and pay the tax imposed by this
5 article.

6 (b) Upon receipt of the application for business
7 registration and the posting of the bond required by section
8 twenty-one, the tax commissioner shall issue to the
9 transient vendor a business registration certificate, which
10 shall be valid for the current registration year, if the
11 application is complete and the transient vendor is not
12 delinquent in the payment of any tax imposed by this
13 chapter. Upon renewal of the registration, the tax
14 commissioner shall issue a new certificate, valid for the
15 next ensuing registration year, provided he is satisfied that
16 the transient vendor has complied with the provisions of
17 this article and is not delinquent in the payment of any tax
18 imposed by this article.

19 (c) The transient vendor shall keep the business
20 registration certificate in his possession at all times when
21 conducting business within this state. He shall publicly
22 display the certificate whenever conducting business in this
23 state and shall exhibit the certificate upon the request of an
24 authorized employee of the tax commissioner or any law-
25 enforcement officer.

26 (d) The business registration certificate issued by the
27 tax commissioner shall constitute notice that the transient
28 vendor named therein has registered with the tax
29 commissioner, and shall provide notice to the transient
30 vendor that:

31 (1) Before entering this state to conduct business the
32 transient vendor must notify the tax commissioner, in
33 writing, of the location or locations in this state where he
34 intends to conduct business, and the date or dates on which
35 he intends to conduct such business.

36 (2) Failure to notify, or the giving of false information to
37 the tax commissioner is grounds for suspension or
38 revocation of the transient vendor's business registration
39 certificate.

40 (3) Conducting business in this state without having a
41 valid business registration certificate after such certificate
42 has been suspended or revoked, may result in criminal
43 prosecution or the imposition of fines, or other penalties, or
44 both for violation of this article.

45 (e) *Definitions.* — For purposes of this section:

46 (1) "Transient vendor" means any person who:

47 (A) Brings into this state, by automobile, truck or other
48 means of transportation, or purchases in this state, tangible
49 personal property the sale or use of which is subject to one
50 or more taxes administered by the tax commissioner under
51 article ten of this chapter;

52 (B) Offers or intends to offer such tangible personal
53 property for sale to consumers in this state; and

54 (C) Does not maintain an established office,
55 distribution house, sales house, warehouse, service
56 enterprise, residence from which business is conducted, or
57 other place of business within this state.

58 (2) The term "transient vendor" shall not include any
59 person who:

60 (A) Is a commercial traveler or selling agent who sells

- 61 only to persons who purchase tangible personal property
62 for purposes of resale to others;
63 (B) Only sells goods, wares or merchandise by sample
64 catalog or brochure for future delivery;
65 (C) Only sells or offers for sale crafts or other handmade
66 items that were made by the seller; or
67 (D) Only sells agricultural and farming products,
68 except nursery products and foliage plants.

§11-12-21. Bond of transient vendors.

- 1 (a) With its application for a business registration
2 certificate, a transient vendor shall post a bond with the tax
3 commissioner in the amount of five hundred dollars as
4 surety for compliance with the provisions of this article.
5 After a period of demonstrated compliance with these
6 provisions, the tax commissioner may reduce the amount of
7 the bond required of a transient vendor or may eliminate
8 the bond entirely.
9 (b) A transient vendor may file with the tax
10 commissioner a request for voluntary suspension of its
11 business registration certificate. If the tax commissioner is
12 satisfied that the transient vendor has complied with the
13 provisions of this article and has relinquished to the tax
14 commissioner possession of the transient vendor's business
15 registration certificate, the tax commissioner shall return
16 to the transient vendor the bond it posted.

§11-12-22. Notification to department.

- 1 Prior to entering this state to conduct business, a
2 transient vendor shall notify the tax commissioner, in
3 writing, of the location or locations where he intends to
4 conduct business and the date or dates when he intends to
5 conduct such business.

§11-12-23. Revocation of certificate of transient merchant.

- 1 The tax commissioner may suspend or revoke a business
2 registration certificate issued to a transient vendor if the
3 transient vendor:
4 (1) Fails to notify the tax commissioner as required by
5 section twenty-two of this article.
6 (2) Provides the tax commissioner with false
7 information regarding the conduct of his business by it
8 within this state.

9 (3) Fails to collect and timely pay over consumers sales
10 and service tax or use tax with regard to all sales of tangible
11 personal property and services sold by him that are subject
12 to the taxes imposed by article fifteen or fifteen-a of this
13 chapter.

14 (4) Fails to timely file with the tax commissioner any tax
15 return required to be filed by law or regulation for any tax
16 administered by article ten of this chapter, or fails to timely
17 pay the amount of tax shown thereon to be due.

18 (5) Fails to comply with the provisions of section eight,
19 article five of this chapter, providing for assessment and
20 payment of ad valorem property taxes on any goods or
21 merchandise of a transient vendor to be offered or furnished
22 for sale in this state.

§11-12-24. Seizure of property of transient vendor.

1 (a) If a transient vendor conducting business within this
2 state fails to exhibit a valid business registration certificate
3 upon demand by an authorized employee of the tax
4 commissioner, such employee or any peace officer of this
5 state at the request of such employee shall have authority to
6 seize, without warrant, the tangible personal property and
7 automobile, truck or other means of transportation used to
8 transport or carry that property. All property seized shall
9 be deemed contraband and shall be subject to immediate
10 forfeiture proceedings instituted by the tax commissioner
11 under procedures adopted by regulation, except as
12 otherwise provided by this section.

13 (b) Property seized under subsection (a) shall be
14 released upon:

15 (1) Presentation of a valid business registration
16 certificate to an authorized employee of the tax
17 commissioner; or

18 (2) Registration by the transient vendor with the tax
19 commissioner and the posting of a bond in the amount of
20 five hundred dollars, either immediately or within fifteen
21 days after the property is seized.

§11-12-25. Severability.

1 If any provision of this article or the application thereof
2 shall for any reason be adjudged by any court of competent
3 jurisdiction to be invalid, such judgment shall not affect,

4 impair or invalidate the remainder of this article, but shall
 5 be confined in its operation to the provision thereon directly
 6 involved in the controversy in which such judgment shall
 7 have been rendered, and the applicability of such provision
 8 to other person or circumstances shall not be affected
 9 thereby.

§11-12-26. Interpretation of preceding sections.

1 None of the provisions of the preceding sections in this
 2 article shall affect any of the sections of this article dealing
 3 with the corporation land holding tax or the corporation
 4 license tax; and none of the sections of this article dealing
 5 with such taxes shall affect any of the sections of this article
 6 dealing with the business registration tax.

CHAPTER 22

(S. B. 8—By Mr. Tonkovich, Mr. President, by request, and Senator Harman)

[Passed May 18, 1986; in effect July 1, 1986. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from consumers sales and services tax; exempting from tax motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of said code leased to a lessee for a period of thirty or more consecutive days; and providing effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9. Exemptions.

- 1 The following sales and services shall be exempt:
 - 2 (1) Sales of gas, steam and water delivered to consumers
 - 3 through mains or pipes, and sales of electricity;
 - 4 (2) Sales of textbooks required to be used in any of the

5 schools of this state;

6 (3) Sales of property or services to the state, its
7 institutions or subdivisions, and to the United States,
8 including agencies of federal, state or local governments for
9 distribution in public welfare or relief work;

10 (4) Sales of motor vehicles which are titled by the
11 department of motor vehicles and which are subject to the
12 tax imposed by section four, article three, chapter
13 seventeen-a of the code;

14 (5) Sales of property or services to churches and bona
15 fide charitable organizations who make no charge
16 whatsoever for the services they render: *Provided*, That the
17 exemption herein granted shall apply only to services,
18 equipment, supplies and materials directly used or
19 consumed by these organizations, and shall not apply to
20 purchases of gasoline or special fuel;

21 (6) Sales of property or services to corporations or
22 organizations qualified under section 501(c)(3) of the
23 Internal Revenue Code of 1954, as amended, or under
24 section 501(c)(4) of the Internal Revenue Code of 1954, as
25 amended, who make casual and occasional sales not
26 conducted in a repeated manner or in the ordinary course of
27 repetitive and successive transactions of like character:
28 *Provided*, That the exemption herein granted shall apply
29 only to services, equipment, supplies and materials directly
30 used or consumed by these organizations and shall not
31 apply to purchases of gasoline or special fuel;

32 (7) Sales of property or services to persons engaged in
33 this state in the business of contracting, manufacturing,
34 transportation, transmission, communication or in the
35 production of natural resources: *Provided*, That the
36 exemption herein granted shall apply only to services,
37 machinery, supplies and materials directly used or
38 consumed in the businesses or organizations named above,
39 and shall not apply to purchases of gasoline or special fuel;

40 (8) An isolated transaction in which any tangible
41 personal property is sold, transferred, offered for sale, or
42 delivered by the owner thereof or by his representative for
43 the owner's account, such sale, transfer, offer for sale or
44 delivery not being made in the ordinary course of repeated
45 and successive transactions of like character by such owner
46 or on his account by such representative;

47 (9) Sales of tangible personal property and services
48 rendered for use or consumption in connection with the
49 conduct of the business of selling tangible personal
50 property to consumers or dispensing a service subject to tax
51 under this article or which would be subject to tax under
52 this article but for the exemption for food provided in
53 section eleven of this article and sales of tangible personal
54 property and services rendered for use or consumption in
55 connection with the commercial production of an
56 agricultural product the ultimate sale of which will be
57 subject to the tax imposed by this article or which would
58 have been subject to tax under this article but for the
59 exemption for food provided in section eleven of this
60 article: *Provided*, That sales of tangible personal property
61 and services to be used or consumed in the construction of
62 or permanent improvement to real property and sales of
63 gasoline and special fuel shall not be exempt;

64 (10) Sales of tangible personal property for the purpose
65 of resale in the form of tangible personal property:
66 *Provided*, That sales of gasoline and special fuel by
67 distributors and importers shall be taxable except when the
68 sale is to another distributor for resale;

69 (11) Sales of property or services to nationally chartered
70 fraternal or social organizations for the sole purpose of free
71 distribution in public welfare or relief work: *Provided*,
72 That sales of gasoline and special fuel shall be taxable;

73 (12) Sales and services, fire fighting or station house
74 equipment, including construction and automotive, made
75 to any volunteer fire department organized and
76 incorporated under the laws of the state of West Virginia:
77 *Provided*, That sales of gasoline and special fuel shall be
78 taxable;

79 (13) Sales of newspapers when delivered to consumers
80 by route carriers;

81 (14) Sales of drugs dispensed upon prescription and
82 sales of insulin to consumers for medical purposes;

83 (15) Sales of radio and television broadcasting time,
84 newspaper and outdoor advertising space for the
85 advertisement of goods or services;

86 (16) Sales and services performed by day care centers;

87 (17) Casual and occasional sales of property or services
88 not conducted in a repeated manner or in the ordinary

89 course of repetitive and successive transactions of like
90 character by corporations or organizations qualified under
91 section 501(c)(3) of the Internal Revenue Code of 1954, as
92 amended, or under section 501(c)(4) of the Internal Revenue
93 Code of 1954, as amended;

94 (18) Bank safety deposit boxes;

95 (19) Sales of property or services to a school which has
96 approval from the West Virginia board of regents to award
97 degrees, which has its principal campus in this state, and
98 which is exempt from federal and state income taxes under
99 section 501(c)(3) of the Internal Revenue Code of 1954, as
100 amended: *Provided*, That sales of gasoline and special fuel
101 shall be taxable;

102 (20) Sales of mobile homes to be utilized by purchasers
103 as their principal year-round residence and dwelling:
104 *Provided*, That these mobile homes shall be subject to tax at
105 the three percent rate;

106 (21) Sales of lottery tickets and materials by licensed
107 lottery sales agents and lottery retailers authorized by the
108 state lottery commission, under the provisions of article
109 twenty-two, chapter twenty-nine of this code; and

110 (22) Leases of motor vehicles titled pursuant to the
111 provisions of article three, chapter seventeen-a of this code
112 to lessees for a period of thirty or more consecutive days.
113 This exemption shall apply to leases executed on or after the
114 first day of July, one thousand nine hundred eighty-seven,
115 and to payments under long-term leases executed before
116 such date, for months thereof beginning on or after such
117 date.

CHAPTER 23

(H. B. 153—By Delegate Feinberg and Delegate Shepherd)

[Passed May 22, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one-a by adding thereto a new section, designated section twenty-nine-a; and to

further amend said chapter eleven by adding thereto a new article, designated article one-b, all relating generally to the periodic statewide appraisal and reappraisal of property subject to ad valorem taxation; the definition of certain terms used with respect thereto; the redefinition of the term "farm" with respect to principal residences situate on farms; prescribing generally the duties of the tax commissioner, the county assessors, sheriffs and county commissions with respect to the valuation of property for ad valorem tax purposes and providing for their removal from office for their failure to perform such duties; providing for an additional period for review of property appraisals completed since the year one thousand nine hundred eighty-two; certain legislative findings with respect thereto; providing that said article one-b shall apply only to the reappraisement of property completed pursuant to the requirements of Article X, Section 1b of the Constitution of West Virginia; providing definitions for certain terms used with respect to such review; requiring the tax commissioner to prepare a list of all taxable property located within the several counties and requiring its publication by the sheriffs thereof; requiring notice of appraised values of each item of real property to be mailed to the owner thereof by the tax commissioner; the content and form of such notices; requiring such owners to be notified as to their right to petition for review of such values; requiring additional notices to be given the public through advertisements in the various news media of the state and the date and content of such advertisements; authorizing such advertisements to be run as a public service by such media, or in lieu thereof, providing for the payment of the costs; review of such appraisements by the county commission and the time for the filing of petitions for such review; the content of such petitions and procedures with respect to the hearings held thereon; the function and duties of the assessor, the prosecuting attorney and other officials with respect to such hearing and review procedures; making and preserving the record of such hearings; the entry of a decision of the county commission and the time by which such decision

is required to be made; authorizing the tax commissioner, assessor and interested parties to enter into agreements and stipulations with respect to such values and the effect thereof; limiting the time when such agreements shall go into effect; the authority of the county commission with respect to such agreements and stipulations; requiring the tax commissioner to hire or retain property tax appraisal consultants; requiring such consultants to assist the public with respect to problems arising from the appraisal and assessment of property; the qualifications of such consultants and their duties and responsibilities; the rights of persons other than the property owner to petition or intervene with respect to reviewing the values of property for ad valorem tax purposes; the duty of the assessor to assist the county commission with respect to establishing such values and to inventory certain properties damaged by the flood which occurred in the state on or about the third or fourth day of November, one thousand nine hundred eighty-five; review of any decision made by the county commission with respect to values by the circuit court upon petition for certiorari; requiring the reimbursement of certain costs to the assessor and sheriff by the tax commissioner; requiring the county commission and the tax commissioner to provide certain reports and the date thereof; procedures and the certification and completion of the property appraisal process in conformance with said article one-b and the implementation thereof; and the date of such implementation.

Be it enacted by the Legislature of West Virginia:

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

Article

- 1A. Appraisal of Property for Periodic Statewide Reappraisals.**
- 1B. Additional Review of Property Appraisals;**

Implementation.**ARTICLE 1A. APPRAISAL OF PROPERTY FOR PERIODIC STATEWIDE REAPPRAISALS.**

§11-1A-3. Definitions.

§11-1A-29a. Duty of tax commissioner, assessors, sheriffs and county commissions in valuation of property.

§11-1A-3. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (a) "Assessed value" of any item of property is its
4 assessed value after the certification of the first
5 statewide reappraisal and shall be sixty percent of the
6 market value of such item of property regardless of its
7 class or species, except as hereinafter specifically
8 provided in this article;

9 (b) "Base year" shall have the meaning ascribed to
10 that term by the provisions of section two of this article;

11 (c) "Commission" shall mean the West Virginia
12 appraisal control and review commission;

13 (d) "Commissioner" or "tax commissioner" shall mean
14 the chief executive officer of the state tax department
15 except in those instances where the context clearly
16 relates to the West Virginia appraisal control and
17 review commission, in which case "commissioner" shall
18 mean any member of such commission;

19 (e) "Designated agent" shall mean a person, not
20 directly employed by the tax commissioner, who is
21 designated by the tax commissioner to perform reap-
22 praisal functions authorized or required by this article.
23 Such term shall include, but not be limited to, agents
24 and independent contractors, and nothing in this article
25 shall be construed to alter the relationship of the state
26 of West Virginia, or its officers, and such persons to
27 create relationships not contemplated by agreements
28 between the tax commissioner and such persons;

29 (f) "Farm" shall mean and include land currently
30 being used primarily for farming purposes, whether by
31 the owner thereof or by a tenant, and which has been

32 so used for at least seasonally during the year next
33 preceding the then current tax year, but shall not
34 include lands used primarily in commercial forestry or
35 the growing of timber for commercial purposes; and
36 shall not include one acre surrounding the principal
37 residence situate on a farm which shall be valued as a
38 homesite in the same manner as surrounding homes and
39 properties not situated on farmland, taking into consid-
40 eration such variables as location, resale value and
41 accessibility. The commissioner of agriculture shall
42 formulate criteria upon which a parcel of land qualifies
43 as a "farm". The county assessor may require the
44 assistance of the commissioner of agriculture in making
45 a determination of whether a parcel of land qualifies as
46 a "farm".

47 (g) "Farming purposes" shall mean the utilization of
48 land to produce for sale, consumption or use, any
49 agricultural products, including, but not limited to,
50 livestock, poultry, fruit, vegetables, grains or hays or
51 any of the products derived from any of the foregoing,
52 tobacco, syrups, honey, and any and all horticultural and
53 nursery stock, Christmas trees, all sizes of ornamental
54 trees, sod, seed and any and all similar commodities or
55 products including farm wood lots and the parts of a
56 farm which are lands lying fallow, or in timber or in
57 wastelands;

58 (h) "Property situate in this state" shall mean:

59 (1) Property having legal situs in this state; or

60 (2) In the case of persons with a place of business
61 located in this state and authorized to do business in this
62 state and one or more other states of the United States
63 or any foreign country:

64 (A) Any tangible property brought into this state
65 from time to time or otherwise deemed to have situs in
66 this state for purposes of ad valorem property taxation;
67 and

68 (B) Any intangible property held by such person;
69 wherever evidence thereof is situate. In the case of
70 assessment of such intangible property for ad valorem

71 property taxation after the first statewide reappraisal
72 only such part thereof as may be determined by
73 applicable law or regulation to be subject to such
74 taxation shall be deemed to be situate in this state;

75 (i) "Value", "market value" and "true and actual
76 value" shall have the same meaning and shall mean the
77 price at or for which a particular parcel or species of
78 property would sell if it were sold to a willing buyer by
79 a willing seller in an arm's length transaction without
80 either the buyer or the seller being under any compul-
81 sion to buy or sell: *Provided*, That in determining value,
82 primary consideration shall be given to the trends of
83 price paid for like or similar property in the area or
84 locality wherein such property is situate over a period
85 of not less than three nor more than eight years next
86 preceding the base year and in the case of a farm or
87 farms shall be determined assuming such land is being
88 used for farming purposes. In addition, the commis-
89 sioner may, for purposes of appraisalment of any tract
90 or parcel of real property, or chattels, real or other
91 species of property, real or personal, take into account
92 one or more of the following factors: (1) The location of
93 such property; (2) its site characteristics; (3) the ease of
94 alienation thereof, considering the state of its title, the
95 number of owners thereof, and the extent to which the
96 same may be the subject of either dominant or servient
97 easements; (4) the quantity of size of the property and
98 the impact which its sale may have upon surrounding
99 properties; (5) if purchased within the previous eight
100 years, the purchase price thereof and the date of each
101 such purchase; (6) recent sale of, or other transactions
102 involving comparable property within the next preced-
103 ing eight years; (7) the value of such property to its
104 owner; (8) the condition of such property; (9) the income,
105 if any, which the property actually produces and has
106 produced within the next preceding eight years; and (10)
107 any commonly accepted method of ascertaining the
108 market value of any such property, including techniques
109 and methods peculiar to any particular species of
110 property if such technique or method is used uniformly
111 and applied to all property of like species.

§11-1A-29a. Duty of tax commissioner, assessors, sheriffs and county commissions in valuation of property.

1 Except as to hearing and deciding petitions for review
2 by the several county commissions, it shall be the
3 responsibility and duty of the tax commissioner to see
4 to the proper and accurate valuation of all property
5 subject to appraisal pursuant to this article or article
6 one-b of this chapter, except for nonutility personal
7 property. It is likewise the duty of the several county
8 assessors, sheriffs and county commissions to assist the
9 tax commissioner in his efforts to ascertain the true
10 value of all such property and it is likewise their
11 individual and collective duties to see to the proper and
12 fair valuation of property within their respective
13 counties. It shall be the responsibility and duty of each
14 county assessor to see to the proper and accurate
15 valuation of all nonutility personal property appraised
16 pursuant to this article. The assessor shall review the
17 initial appraisal of such personal property and shall
18 make such adjustments as will render said appraisal
19 equal and uniform. The tax commissioner shall provide
20 such necessary guidelines and instructions, in accor-
21 dance with chapter twenty-nine-a of this code to
22 assessors as will ensure fair and uniform values of such
23 property within each county and among all counties in
24 this state. The tax commissioner shall review each
25 assessor's work to ensure that such guidelines and
26 instructions have been uniformly followed. Any changes
27 in appraised values shall be entered into the computer
28 network required by section twenty-one of this article,
29 and notice of such change shall be mailed to the
30 property owner. The failure of any such county official
31 so to do or to carry out his or her duties with respect
32 thereto shall constitute grounds for the removal from
33 office of any such official.

ARTICLE 1B. ADDITIONAL REVIEW OF PROPERTY APPRAISALS; IMPLEMENTATION.

- §11-1B-1. Legislative findings and intent.
- §11-1B-2. Application of article.
- §11-1B-3. Definitions.
- §11-1B-4. Appraisal of property.

- §11-1B-5. Preparation of property list by tax commissioner; publication by sheriff.
- §11-1B-6. Notice of appraised values of real property to owner by tax commissioner; contents; form.
- §11-1B-7. Additional newspaper, radio and television advertising required.
- §11-1B-8. Review by county commission; petition therefore; hearing; decision.
- §11-1B-9. Agreements by owner, tax commissioner and assessor; stipulations; agreed values to be used as appraised values.
- §11-1B-10. Property tax appraisal consultants; assignment; duties; recommendations to tax commissioner.
- §11-1B-11. The right of other property owners or assessor to petition for review or intervene.
- §11-1B-12. Time of decision by county commission.
- §11-1B-13. Duty of assessor to assist county commission; inventory of flood damaged property.
- §11-1B-14. Review by circuit court on certiorari.
- §11-1B-15. Right of tax commissioner, assessor or property owner to review of newly discovered matters; limitations.
- §11-1B-16. Reimbursement of costs to assessor and sheriff.
- §11-1B-17. Report by county commission required; reports to Legislature.
- §11-1B-18. Appraisal of property; date of implementation; assessor to make assessments.

§11-1B-1. Legislative findings and intent.

1 (a) The Legislature hereby finds that many citizens
2 and taxpayers of this state have the belief that an
3 unacceptable number of errors and misinformation are
4 included within the results of the statewide appraise-
5 ment of property subject to ad valorem taxes pursuant
6 to the amendment of Article X, Section 1b of the
7 Constitution of West Virginia, adopted in the year one
8 thousand nine hundred eighty-two, which belief is
9 sufficient to cast doubt over the results of such reappraisal
10 in the mind of the general public.

11 (b) The Legislature recognizes that the constitution-
12 ally mandated reappraisal required an unprecedented
13 effort to be expended by the state and counties to
14 identify and establish the value of all of the property of
15 this state in a fair, equal and uniform manner. The
16 Legislature also finds that the success of such an
17 ambitious and important program depends in large
18 measure upon public confidence and assurance as to its
19 fairness and accuracy. The revenues produced by ad
20 valorem taxation are vital to county government, public
21 education, and municipalities, and only upon full

22 compliance with the purpose and intent of the constitu-
23 tional requirements may our citizens and their represen-
24 tatives determine the appropriate level of ad valorem
25 taxation.

26 (c) It is therefore the intent of the Legislature to
27 provide a process by which property owners, if they so
28 desire, may inquire of and object to the results of such
29 reappraisal and have the same reviewed and, in the
30 proper cases, adjusted so as to reflect the true value of
31 all property subject to ad valorem taxes prior to the
32 implementation of such reappraisal by the Legisla-
33 ture. It is the further intent of the Legislature that to
34 these ends the tax commissioner, the several county
35 commissioners, assessors and sheriffs shall expend the
36 maximum efforts to addressing the inquiries and
37 complaints of taxpayers with respect to the reappraisal
38 and in an expeditious and orderly manner seek to review
39 and ascertain fair and accurate values for all properties.

§11-1B-2. Application of article.

1 The provisions of this article shall apply only to the
2 appraisement of property subject to ad valorem taxation
3 and which was required by law to be appraised
4 pursuant to the mandate set forth in Article X, Section
5 1b of the Constitution of this state as amended in the
6 year one thousand nine hundred eighty-two, and shall
7 not apply to any appraisement or reappraisal of any
8 such property in any county or counties of this state
9 prior to the adoption of such amendment nor subsequent
10 to the year one thousand nine hundred eighty-seven.

§11-1B-3. Definitions.

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

3 (1) "Assessed property", "taxable property" or "prop-
4 erty" shall mean and include all real estate and personal
5 property or interests therein which were required to be
6 appraised pursuant to Article X, Section 1b of the
7 Constitution of this state, as amended in the year one
8 thousand nine hundred eighty-two (except as may be

9 exempted from ad valorem taxation by the provisions of
10 Article X, Section 1a of the Constitution of this state as
11 amended in the year one thousand nine hundred eighty-
12 four) and any statute or statutes subsequently enacted
13 which would implement such amendment and, with
14 respect to real property, any and all improvements or
15 structures thereon or attached thereto.

16 (2) References to the term or terms "the appraisal" or
17 "the appraisement", "appraisal" or "appraisement" shall
18 mean the appraisement of property which was made or
19 performed following the adoption of and pursuant to the
20 amendment to Article X, Section 1b of the Constitution
21 of West Virginia adopted in the year one thousand nine
22 hundred eighty-two and also pursuant to article one-a
23 of this chapter, and any modifications and revisions
24 made thereto prior to the effective date of this article,
25 subject however, to those exemptions subsequently
26 granted by the amendments to Section 1a of said Article
27 X of the Constitution adopted in the year one thousand
28 nine hundred eighty-four.

29 (3) "Market value" or "true and actual value" or the
30 unqualified word "value" shall have the same meaning
31 ascribed thereto by the provisions of subdivision (i),
32 section three, article one-a of this chapter.

§11-1B-4. Appraisal of property.

1 (a) All property as defined in section three of this
2 article shall be appraised at its true and actual value
3 as that term is defined in subdivision (i), section three,
4 article one-a of this chapter.

5 (b) Any provision of article one-a of this chapter or of
6 any other provision of law to the contrary notwithstand-
7 ing, neither the appraisement nor the values ascertained
8 thereby shall be used by the several county assessors,
9 county commissions or the tax department for purposes
10 of ad valorem tax assessments until after the thirtieth
11 day of June, one thousand nine hundred eighty-seven
12 except in accordance with this article.

§11-1B-5. Preparation of property list by tax commis- sioner; publication by sheriff.

1 (a) The tax commissioner shall compile a list of all
2 separately assessed property which was subject to the
3 appraisal. A separate list shall be compiled for each
4 county, which list shall include the district in which the
5 property is or was located at the time of appraisals, the
6 owner or owners of such separately assessed item or
7 parcel at that time and the appraisal value thereof. To
8 the extent known by the tax commissioner, such list
9 shall include and reflect the name of the current
10 property owner to the extent ownership of the subject
11 property has changed since its reappraisal. Such list
12 shall be delivered to the several assessors, sheriffs and
13 county commissions on or before the fifteenth day of
14 June, one thousand nine hundred eighty-six. All pro-
15 posed final appraisals shall be included in such list and
16 shall reflect all final revisions and modifications which
17 are made or to be made prior to such date pursuant to
18 sections sixteen and seventeen, article one-a of this
19 chapter with respect to property which has been subject
20 to revisions or modifications in the value thereof, or if
21 an appeal is pending before the county commission with
22 respect to the value of any such property then the list
23 shall include the last value certified by the tax commis-
24 sioner to the county commission as to such property or
25 if the value has been established by order of the county
26 commission and a petition for writ of certiorari is still
27 pending before the circuit court and shall have not been
28 finally determined by the court, then the value last
29 adopted by the county commission shall be included in
30 the list and such fact or facts shall be separately noted
31 in such list.

32 (b) The sheriff shall, upon receipt of the list required
33 to be compiled and delivered by the tax commissioner,
34 forthwith cause notice to be given owners that the
35 appraisal of all property subject to ad valorem taxation
36 within the county has been completed and that the
37 results thereof are available to any person interested
38 therein at the office of the assessor. Such notice shall be
39 given in the form of a Class I-O legal advertisement in
40 accordance with article three, chapter fifty-nine of this
41 code and the publication area shall be the county. The
42 assessor shall simultaneously inform the tax commis-

43 sioner of the fact that the notice was or has been
44 published according to the requirements of this section.

§11-1B-6. Notice of appraised values of real property to owner by tax commissioner; content; form.

1 (a) The tax commissioner shall also on or before the
2 fifteenth day of August, one thousand nine hundred
3 eighty-six, first mail to each owner, a notice of the
4 amount of such appraised value of all real property
5 subject to ad valorem taxation, as modified or revised.
6 Such notice shall be addressed and mailed to the person
7 or persons in whose name any and all such real property
8 is assessed or was assessed in the year one thousand nine
9 hundred eighty-three, or if the property has been
10 transferred or replaced upon the tax books of the sheriff,
11 then at the name and address reflected upon the tax
12 tickets in the office of the sheriff of the county wherein
13 such property is located. If such address be unknown to
14 the tax commissioner, an alphabetical listing of such
15 properties shall be forwarded to such sheriff on or
16 before the fifteenth day of June, one thousand nine
17 hundred eighty-six, and such sheriff shall provide the
18 appropriate mailing address for each such property in
19 the list, such completed list to be returned to the tax
20 commissioner on or before the first day of July, one
21 thousand nine hundred eighty-six.

22 (b) The notice required to be mailed by the provisions
23 of subsection (a) of this section shall be upon uniform
24 forms prepared by the tax commissioner and shall be
25 of simple and readily understandable language and
26 design. The notice shall advise each property owner that
27 (i) an additional opportunity and final period of review
28 is being afforded to request a review of the appraised
29 value of the real property before the county commission
30 prior to the final implementation of such values for ad
31 valorem tax purposes, (ii) that an application or request
32 for such review must be filed with the county commis-
33 sion not later than the second day of September, one
34 thousand nine hundred eighty-six, (iii) that all property
35 owners have a right to petition for review of the value
36 placed upon such property irrespective of whether such
37 owners had previously petitioned for review by the

38 county commission which had finally determined such
 39 value or whether such review process was currently
 40 pending either before the county commission or upon
 41 certiorari before the circuit court as provided in section
 42 eighteen, article one-a of this chapter, (iv) that the
 43 information and data relied upon in making the
 44 appraisal and in fixing the value of such property is
 45 available in the office of the county assessor at no cost
 46 to the property owner or other interested persons, (v)
 47 that such owner may in his or her petition or at any
 48 hearing held thereon, in addition to those matters
 49 relative to the reappraisal, present such factors or
 50 circumstances as, in the judgment of the owner, may
 51 have resulted in either an increase or decrease in the
 52 value of the property in question since the appraisal, and
 53 (vi) the description of the property which shall include,
 54 but not be limited to, the acreage and general landbook
 55 description on the landbook. Such factors or circumstan-
 56 ces may be taken into consideration by the county
 57 assessor or county commission in fixing the assessed
 58 value thereof for the tax year for which a lien attaches
 59 on the first day of July, one thousand nine hundred
 60 eighty-seven: *Provided*, That such factors shall have no
 61 bearing upon the issues involved in establishing the true
 62 value of such property as established by the appraisal.
 63 Such notice shall include the information hereinbefore
 64 required and for notices affecting surface real property
 65 values shall set forth at least the following information
 66 in the form shown or as near thereto as may be
 67 practicable:

68 NOTICE

69 YOU ARE HEREBY NOTIFIED OF THE VALUE
 70 PLACED UPON YOUR PROPERTY WHICH IS
 71 IDENTIFIED BELOW. THIS VALUE RESULTS
 72 FROM THE REAPPRAISAL OF ALL PROPERTY
 73 SUBJECT TO PROPERTY TAX AS REQUIRED BY
 74 THE STATE CONSTITUTION.

75 COUNTY ___ DIST ___ MAP ___ PARCEL ___ SPID ___
 76 PROPERTY LOCATION: (Including address) _____
 77 _____ DATE _____
 78 TAX CLASS: ___ ACCOUNT NO. ___ NOTICE: _____

79 OWNERS NAME
 80 MAILING ADDRESS
 81 CITY, STATE, ZIP

82 DEAR PROPERTY OWNER,

83 IN COMPLIANCE WITH THE PROVISIONS OF
 84 THE WEST VIRGINIA STATE CONSTITUTION,
 85 ALL PROPERTY HAS BEEN REAPPRAISED
 86 BASED ON FAIR MARKET VALUE AS OF JULY,
 87 1983.

88 STATE LAW REQUIRES THAT ALL ASSESS-
 89 MENTS BE 60% OF FAIR MARKET VALUE AND
 90 THAT ANY INCREASES IN ASSESSMENTS BE
 91 PHASED-IN OVER A 10 YEAR PERIOD.

92 FOLLOWING ARE THE RESULTS OF THE RE-
 93 VALUATION AND THE ESTIMATED TAX IM-
 94 PACT FOR THE PROPERTY LISTED ABOVE.

95 YOUR PROPERTY'S 1983
 96 MARKET/VALUE = \$ _____
 97 X60%
 98 ASSESSMENT VALUE..... = \$ _____
 99 LESS YOUR CURRENT
 100 ASSESSED VALUE = \$ _____
 101 DIFFERENCE IN VALUE = \$ _____

102 ASSUMING THE TAX RATES IN YOUR COUNTY
 103 DO NOT CHANGE AND ALSO ASSUMING THAT
 104 THERE HAVE BEEN NO CHANGES IN YOUR
 105 PROPERTY SINCE 1983 YOUR CURRENT AS-
 106 SSESSED VALUE OF \$ _____ WILL BE IN-
 107 CREASED TO \$ _____ FOR THE YEAR _____
 108 AND WILL BE INCREASED \$ _____ EACH YEAR
 109 THEREAFTER FOR A TOTAL PERIOD OF TEN
 110 YEARS. BASED ON CURRENT ASSESSMENTS
 111 YOUR TAX FOR THE NEXT YEAR WILL BE
 112 \$ _____. IF YOUR ASSESSOR DETERMINES
 113 THAT YOUR PROPERTY HAS THE SAME VALUA-
 114 TION AS IN 1983 AND THAT THE LEVY RATES
 115 REMAIN THE SAME, THEN IN THAT EVENT
 116 YOUR TAX THE TENTH YEAR WILL BE \$ _____.

117 THE VALUES, ASSESSMENTS AND AMOUNT

118 OF TAXES SHOWN ABOVE DO NOT INCLUDE OR
119 TAKE INTO ACCOUNT ANY CREDIT FOR THE
120 HOMESTEAD EXEMPTION. IF YOU ARE ELIGI-
121 BLE FOR THE HOMESTEAD EXEMPTION, NEXT
122 YEAR'S PROPERTY TAX SHOULD BE REDUCED
123 OR ELIMINATED.

124 THE VALUES SHOWN ABOVE DO NOT IN-
125 CLUDE OR REFLECT ANY INCREASES OR DE-
126 CREASES IN VALUE BECAUSE OF REPLACE-
127 MENT, ADDITIONS OR OTHER FACTORS OR
128 CIRCUMSTANCES OCCURRING SINCE 1983.

129 IF YOU DISAGREE WITH THE VALUE PLACED
130 UPON THE ABOVE DESCRIBED PROPERTY OR
131 IF YOU BELIEVE CHANGES HAVE OCCURRED
132 IN SUCH PROPERTY SINCE 1983 WHICH WOULD
133 IN YOUR OPINION REDUCE THE VALUE OF
134 YOUR PROPERTY, THEN YOU SHOULD PETI-
135 TION THE COUNTY COMMISSION FOR REVIEW.

136 (c) In addition to any other notice required to be given
137 to property owners by any provisions of this article, the
138 sheriff shall give or provide a notice which shall advise
139 the property owners of the fact that the right to petition
140 for review of the value will expire on the second day of
141 September, one thousand nine hundred eighty-six, that
142 such petition must be filed or presented to the county
143 commission on or before that date, and that no such
144 petition shall be received thereafter. Such notice shall
145 be included as a separate document within the same
146 envelope in which tax tickets are mailed, or be delivered
147 with such tax tickets to property owners pursuant to
148 section eight, article one, chapter eleven-a of this code.

149 (d) The fact that an owner failed to receive any notice
150 pursuant to the provisions of this article shall not affect
151 the right of the property owner to petition for review
152 within the time prescribed, and shall not extend the
153 period by or during which any such petition is permitted
154 to be filed, as provided by this article, nor serve to toll
155 the time by which any such petition is required to be
156 filed.

157 (e) The sheriff, assessor, clerk of the county commis-

158 sion and all other county officers shall cooperate and
159 assist the tax commissioner in locating and ascertaining
160 proper, correct and current addresses of all owners of
161 property subject to ad valorem taxes in order that the
162 mailing of the notices required by the provisions of this
163 section or of any other provision of this article may
164 achieve the greatest degree of proficient and accurate
165 delivery.

166 (f) Nothing in this article shall be construed to
167 diminish to any extent any responsibility on the part of
168 any property owner or taxpayer to see to the proper,
169 accurate and timely return of any property required to
170 be returned or to see that any such property is assessed
171 and taxed according to law and to the extent provided
172 by law.

**§11-1B-7. Additional newspaper, radio and television
advertising required.**

1 (a) In addition to the legal advertisement required by
2 section five of this article and the notice requirements
3 of section six of this article, the tax commissioner shall
4 cause retail display advertisements, as opposed to, and
5 other than, legal and classified advertisements, to be
6 published in every newspaper of general circulation
7 within each county of this state which shall generally
8 and plainly inform the property owners and taxpayers
9 of each county that the period to file their petition for
10 review of the appraised value of their property for ad
11 valorem property tax purposes expires on the second
12 day of September, one thousand nine hundred eighty-
13 six, and that such petitions must be filed with the county
14 commission on or before that date. Such advertisements
15 shall be of a size sufficient to be readily visible and
16 apparent to the readers of such newspaper and shall be
17 at least fifteen column inches or its equivalent and shall
18 appear in each such newspaper in some portion thereof
19 other than that portion devoted to legal and classified
20 advertising. The tax commissioner shall solicit the
21 running of such advertisement as a public service or at
22 a reduced cost, but, in any event, the cost of all such
23 advertising shall be paid for by the state tax commis-
24 sioner. Such advertisements shall be run at least three

25 times between the first day of July, one thousand nine
26 hundred eighty-six and the twentieth day of August of
27 said year, but not more often than once per week during
28 such period, and shall be run a fourth and final time
29 no earlier than the thirtieth day of August or, in the case
30 of weekly newspapers, the edition next preceding that
31 date. Further, the commissioner shall provide news
32 stories to be carried and asked to be published which
33 would inform the public of the matters required to be
34 advertised and of which notice is required to be given
35 by this article.

36 (b) In addition to the advertisement required by
37 section six of this article and subsection (a) of this
38 section, the tax commissioner shall arrange for radio
39 and television advertisements to be carried by a
40 sufficient number of stations to assure statewide
41 coverage, which advertisements shall be designed to
42 plainly inform the public that the period during which
43 property owners and taxpayers are permitted to petition
44 for review of the appraised value of their property for
45 ad valorem property tax purposes expires on the second
46 day of September, one thousand nine hundred eighty-
47 six, and that such petitions must be filed with the county
48 commission on or before that date. Such advertisements
49 shall likewise be broadcast at least three times between
50 the first day of July, one thousand nine hundred eighty-
51 six and the twentieth day of August of said year and
52 shall, if possible to arrange, be broadcast as public
53 service advertisements, and, in any event, shall be
54 broadcast at such hours or times calculated to maximize
55 their exposure to the viewing and listening public. To
56 the extent that the tax commissioner cannot arrange for
57 such advertisements to be broadcast as public service
58 advertisements, the cost shall be paid for by the tax
59 commissioner.

60 (c) The paid advertisements required to be seen or
61 broadcast by the provisions of this section shall not
62 include the name of the tax commissioner or of any other
63 public official or employee, whether elected or ap-
64 pointed, and such person may be referred to in such
65 advertisements, if at all, by their title or office only.

66 (d) Failure of any newspaper, radio and television
67 advertising to be published or broadcast as provided by
68 subsection (a) or (b) shall not invalidate or impair the
69 additional review of property appraisals provided for by
70 this article.

**§11-1B-8. Review by county commission; petition there-
fore; hearing; decision.**

1 (a) Not later than the second day of September, one
2 thousand nine hundred eighty-six, the owner of any
3 assessed property may petition for review of the
4 appraised value of his or her property. Such petition
5 shall be filed with the county commission of the county
6 wherein such property or the greater portion thereof is
7 situate. No hearing shall be held with respect to any
8 such petition filed or received by the county commission
9 after the date hereinabove specified or which has not
10 been deposited in the regular course of the United States
11 mail, postage prepaid, and properly addressed to the
12 county commission on or before such date. Such county
13 commission shall forthwith mail or deliver at least
14 weekly true copies of all such petitions to the tax
15 commissioner and to the county assessor which shall
16 reflect the date of filing.

17 (b) The state tax commissioner shall devise and make
18 available a form which may be used as a petition by any
19 owner or taxpayer seeking review of the appraised value
20 of any such property. The petition shall set forth the
21 name of the petitioner, the address or identification of
22 the property in question, preferably reflected upon the
23 most recent tax ticket, and the county and district
24 wherein such property is located and shall state in
25 general terms all matters of or to which the owner or
26 owners take exception or believe to be in error with
27 respect to the proposed appraised value of such property
28 and such other matters as the owner or petitioner deems
29 necessary to inform the county commission and the
30 parties of the nature of such owner's complaint. The
31 owner may also petition with respect to and raise at any
32 time any issue, fact or circumstance which has occurred
33 with respect to the subject property since the year one
34 thousand nine hundred eighty-three. The petitioner may

35 use such form as provided by the tax commissioner or
36 may use his or her own petition which need not be in
37 any specific form so long as the nature of the complaint
38 and request for review can be ascertained. Such forms
39 as are prepared by the tax commissioner shall be made
40 available at the offices of the county commission, the
41 county clerk, the assessor and the sheriff and at such
42 other places in the community as the tax commissioner
43 may deem appropriate and may be included in or with
44 the notice required by section six of this article.

45 (c) The county commission shall sit as an administra-
46 tive appraisal review board as required by the provi-
47 sions of section seventeen, article one-a of this chapter
48 in review of the appraised value of the property in
49 question. In so doing, the county commission shall hear
50 such testimony under oath, and receive such other
51 evidence as the county commission may deem pertinent,
52 as the owner, the tax commissioner or other interested
53 person may offer, including the assessor, and shall make
54 a true record of the hearing and evidence presented by
55 nonstenographic electronic recording or other device
56 which will assure that the recorded testimony will be
57 accurately preserved. The county commission shall also
58 receive evidence of any substitutions, accretions,
59 improvements, additions, replacements, destructions,
60 removals, casualties, acts of God, waste or any like
61 occurrences or any similar factors or occurrences which
62 have caused or resulted in any change in value of any
63 property subject to reappraisal for use by the assessor
64 and the county commission in fixing values for the year
65 one thousand nine hundred eighty-seven. Copies or
66 transcriptions of the records shall be available at the
67 request of any of the parties who shall bear the cost
68 thereof. The provisions of subsections (b), (c) and (d) of
69 said section seventeen, article one-a shall apply to
70 hearings held pursuant to this article, except to the
71 extent the same are in direct conflict with the provisions
72 of this article.

73 (d) Any other provision of present law to the contrary
74 notwithstanding, the prosecuting attorney of the county
75 shall serve in the capacity of law advisor only to the

76 county commission when called upon by the county
77 commission to assist it with respect to questions of law
78 of which they may be concerned in any hearing held
79 pursuant to this article and shall not represent the tax
80 commissioner in any capacity with respect to any such
81 hearing.

82 (e) Any other provision of present law to the contrary
83 notwithstanding, the tax commissioner may, at his
84 request, be represented in any proceeding under either
85 article one-a or one-b of this chapter by the attorney
86 general, by an attorney permanently or temporarily
87 employed by the tax commissioner, or by an attorney
88 with whom the tax commissioner has contracted for
89 such service.

90 (f) The tax commissioner shall be a party to every
91 hearing held pursuant to this article and it shall be his
92 duty in such capacity to see to the equal and uniform
93 taxation of all species, types, items and parcels of
94 property subject to ad valorem taxation.

95 (g) Upon making such true record and preserving as
96 part of the record the other evidence presented, the
97 county commission shall determine whether the amount
98 of value fixed by the appraisal of the property is correct
99 under the circumstances. If the county commission finds
100 the appraisal to be correct it shall enter an order
101 approving the value as appraised and adopting by
102 reference the determination and information provided
103 by the tax commissioner. If the county commission
104 determines that the amount of value fixed by the
105 appraisal of the property is incorrect, and if sufficient
106 evidence has been presented to permit correction of the
107 appraisal, the county commission shall correct the
108 appraisal and fix the value of the appraised property.
109 If the county commission shall find that the evidence is
110 not sufficient to determine the correct value, the county
111 commission shall direct the parties to develop and
112 present such additional evidence as may be necessary
113 and may continue the hearing to a date and time, not
114 to exceed ten days, for the purpose of receiving such
115 evidence sufficient to fix the true and correct appraised
116 value. If either of the parties need more time in which

117 to further develop or prepare such additional evidence,
118 then, upon so informing the other party or parties and
119 the county commission, a further period of time, not to
120 exceed an additional period of ten days, shall be granted
121 for that purpose. Upon making its determination as to
122 the true and correct appraised value, the county
123 commission shall enter its order establishing such value,
124 which order shall include the commission's findings and
125 its reason or reasons therefor, and shall forward a true
126 copy of such order to all the parties. The county
127 commission shall transmit to the assessor those circum-
128 stances and matters which would cause a change in the
129 value of any property for such use as may be approp-
130 riate in fixing assessed value in the year one thousand
131 nine hundred eighty-seven. Such matters shall include,
132 but not be limited to, those situations or circumstances
133 required to be received by the county commission
134 pursuant to subsection (c) of this section.

135 (h) Any owner whose property has been the subject of
136 review to determine the proper value thereof pursuant
137 to this article or article one-a of this chapter shall not
138 be precluded from pursuing or exercising any other
139 right or procedure, or appearing before any forum for
140 the purpose of fixing the value of property for ad
141 valorem tax purposes, and for that purpose neither the
142 provisions of this article nor of article one-a of this
143 chapter shall be deemed to afford remedies which are
144 severally or jointly exclusive.

**§11-1B-9. Agreements by owner, tax commissioner and
assessor; stipulations; agreed values to be
used as appraised values.**

1 (a) At any time prior to the rendering of a decision
2 by the county commission pursuant to section eight of
3 this article, if the tax commissioner concludes that the
4 appraised value of any property is incorrect or improper
5 because of a clerical error or error of fact or mistake
6 occasioned by inadvertance or an unintentional act as
7 distinguished from errors or mistakes resulting from
8 the exercise of judgment, the tax commissioner may
9 correct such error or mistake and give notice thereof to
10 the property owner, the appropriate assessor, county

11 commission and sheriff of the county wherein the
12 property is assessed for ad valorem tax purposes.

13 (b) If after receipt of the copy of the owner's petition
14 for review before the county commission, the tax
15 commissioner determines that the facts set forth by the
16 property owners in his or her petition are correct, the
17 tax commissioner may modify such value accordingly.
18 The commissioner shall notify the owner or owners of
19 his or her action as well as the appropriate assessor,
20 county commission and sheriff, and in such notice shall
21 include a new appraised value. If the owner agrees to
22 such new appraised value he or she shall so notify the
23 tax commissioner and the county commission. The
24 county commission shall enter its order adopting such
25 value as the appraised value of the property for ad
26 valorem tax purposes. If the owner further objects to the
27 new appraised value arrived at by the tax commissioner,
28 he or she shall forthwith so inform the tax commissioner
29 and the county commission, setting forth his or her
30 reasons therefor, and the matter shall proceed to final
31 conclusion as provided for in section eight of this article.

32 (c) Nothing in this section shall prevent the owners,
33 the tax commissioner, any intervenors, the assessor or
34 any of them from stipulating any issue or issues
35 included in the review, nor shall any provision of this
36 article or other provision of law prevent such parties
37 from agreeing upon a settlement of the matters and
38 jointly recommending to the county commission such
39 agreements and stipulations which may be accepted or
40 rejected by the county commission. If accepted, such
41 agreements or stipulations shall be entered by the
42 county commission in the manner provided in subsection
43 (d) of this section. If the county commission rejects the
44 agreement it shall so inform the parties and proceed
45 with the hearing.

46 (d) Any agreement reached or stipulation agreed
47 upon pursuant to this section or authorized thereby shall
48 be presented by the parties in open hearing before the
49 county commission or be filed with the county commis-
50 sion in writing to be jointly agreed upon by the parties
51 and to be made available for public inspection. Such

52 presentation or writing shall include the reasons or
53 rationale for the agreement or stipulation, and the
54 county commission shall set forth the same in brief form
55 in any order ratifying or confirming the same. Any
56 agreement reached or stipulation agreed upon which
57 shall have the direct effect of fixing the value of any
58 property shall not be entered or accepted by the county
59 commission and entered of record as finally fixing such
60 value until a period of five days shall have elapsed since
61 the day of presentation, nor shall the same be the subject
62 of objection thereafter.

§11-1B-10. Property tax appraisalment consultants; assignment; duties; recommendations to tax commissioner.

1 As soon as may be practicable after the effective date
2 of this section, the tax commissioner may employ four
3 persons as public property tax appraisalment consultants
4 to be of assistance to the public and available to it. The
5 tax commissioner may assign such persons to any county
6 or area of the state in which their assistance is required.
7 Such consultants shall provide information, guidance,
8 assistance and instructions to any residential, farm or
9 other noncommercial owner or taxpayer regarding real
10 estate and personal property tax appraisalment matters.
11 For this purpose, the consultant is authorized (i) to
12 examine and review the records of the assessor, the
13 sheriff and the tax commissioner upon request, (ii) to
14 investigate matters of complaint by such residential
15 owners or taxpayers who request his or her assistance,
16 (iii) to make reports and recommendations to the tax
17 commissioner with respect to any pertinent information
18 or proposed corrections for consideration by the tax
19 commissioner in arriving at the true and correct value
20 of such property as hereinafter provided, and (iv) to act
21 with respect to such other matters as may be of
22 assistance to any such residential owners or taxpayers
23 in understanding and resolving issues concerning such
24 value. Such persons shall be individuals who are
25 experienced in dealing with the public in a congenial
26 and courteous manner and who are knowledgeable with
27 property and property values in the area in which he

28 or she serves.

29 If at any time the tax commissioner determines, based
30 upon, or as a result of, reports of or consultations with
31 the consultants, that a modification or adjustment of the
32 appraised value of any property is indicated, the tax
33 commissioner shall so notify the taxpayer, consultant
34 and assessor of the proposed modification or adjustment.
35 If the residential owner shall agree to the proposed
36 modification or adjustment, the tax commissioner shall
37 modify or adjust the value accordingly. If the tax
38 commissioner disagrees with the recommendations or
39 reports of the consultant, he or she shall immediately so
40 notify the owner and consultant of that fact, and the
41 matter shall be resolved as otherwise provided in this
42 article.

**§11-1B-11. The right of other property owners or asses-
sor to petition for review or intervene.**

1 (a) Any person who is a taxpayer of ad valorem
2 property taxes in any West Virginia county may protest
3 an appraisal of property under this article for good
4 cause alleged and shown. A person desiring to protest
5 an appraisal of property shall petition for a hearing
6 before the county commission in the same manner as an
7 owner would petition for review and hearing with
8 regard to the appraisal of his property as provided in
9 this article: *Provided*, That a petition for protest must
10 be filed with the county commission no later than the
11 second day of September, one thousand nine hundred
12 eighty-six. The hearing of a protest shall be governed
13 by the same procedures described for hearings before
14 the county commission in section eight of this article and
15 notice of such shall be given as required by subsection
16 (d) of this section.

17 (b) Upon a showing of good cause, any person who is
18 a taxpayer of ad valorem property taxes in any West
19 Virginia county may be permitted to intervene by
20 petition in writing in the hearing provided for in this
21 section.

22 (c) In the event any person shall petition for review
23 of or protest to the appraisal value of or given to the

24 property of another, or in the event of intervention
25 pursuant to this section, the owner of such property shall
26 be given all rights afforded by this article, including the
27 right to protection for review by cross petition or
28 otherwise, to the same extent as if the owner had
29 appealed or petitioned timely in the first instance.

30 (d) Any petition filed pursuant to subsection (a) or (b)
31 of this section shall be filed in writing and shall set forth
32 the objections of the petitioner or intervenor to the
33 appraisal in question or at issue. A copy of such petition
34 shall be served upon, mailed to or delivered to the
35 property owner and the tax commissioner, and there
36 shall be appended thereto the certificate of the peti-
37 tioner or intervenor or of his or her attorney stating that
38 true copies of such petition have been served upon or
39 mailed or delivered to such property owner and tax
40 commissioner no later than the same date upon which
41 such copies were so mailed, delivered or served.

§11-1B-12. Time of decision by county commission.

1 All review hearings conducted by county commissions
2 sitting for the purposes of this article shall be completed
3 and determinations rendered thereon by the first day of
4 December, one thousand nine hundred eighty-six. The
5 county commission may consolidate hearings and
6 reviews in order to avoid duplication and unnecessary
7 repetition where the same or similar facts or issues are
8 in dispute.

**§11-1B-13. Duty of assessor to assist county commission;
inventory of flood damaged property.**

1 (a) The county commission, sitting in review of
2 appraisals pursuant to this article, may require the
3 assistance of the county assessor in making its determi-
4 nations under this article. Further, the assessor shall be
5 competent to testify as to values of property generally
6 or as to the value of a specific item of property when
7 called upon to do so by either of the parties or the county
8 commission.

9 (b) It shall be the additional duty of the assessor in

10 the counties of Barbour, Berkeley, Braxton, Calhoun,
11 Doddridge, Gilmer, Grant, Greenbrier, Hampshire,
12 Hardy, Harrison, Jefferson, Lewis, Marion, Mineral,
13 Monongalia, Monroe, Morgan, Nicholas, Pendleton,
14 Pocahontas, Preston, Randolph, Summers, Taylor,
15 Tucker, Tyler, Upshur and Webster to prepare an
16 inventory of all property damaged as a result of the
17 flood which occurred in those counties during the month
18 of November, one thousand nine hundred eighty-five, to
19 the extent of damage thereto, which shall be noted for
20 such use as may be proper with respect to any future
21 assessments of any such property.

§11-1B-14. Review by circuit court on certiorari.

1 Within thirty days after the day the county commis-
2 sion notifies the parties of a final determination of value
3 made pursuant to section eight of this article, the owner,
4 tax commissioner, protestor or intervenor may request
5 the county commission to certify the evidence and
6 remove and return the record to the circuit court of the
7 county on a writ of certiorari instituted in accordance
8 with the provisions of article three, chapter fifty-three
9 of this code. For purposes of this article, the recorded
10 testimony of the hearing, when certified by the county
11 commission may be used by the circuit court as the
12 transcript of testimony. If the petition for review be
13 made by the tax commissioner or the assessor as to two
14 or more separate items or parcels of property and for
15 separate property owners, all such matters may be
16 included within one petition if each separate owner is
17 notified thereof and given opportunity to respond
18 thereto. Except to the extent the same is in direct
19 conflict with the provisions of this section, the provisions
20 of section eighteen, article one-a of this chapter shall
21 govern reviews by circuit courts of any proceedings
22 brought under this article.

**§11-1B-15. Right of tax commissioner, assessor or prop-
erty owner to review of newly discovered
matters; limitations.**

1 (a) The tax commissioner, the assessor or any prop-

2 erty owner at any time after the second day of Sep-
3 tember, one thousand nine hundred eighty-six, and
4 before the first day of October of said year shall have
5 the right to petition the county commission to reopen
6 and review in accordance with the provisions of this
7 article. In the event the tax commissioner or assessor so
8 petitions the county commission, the owner of the
9 property shall forthwith be notified of the petition by
10 mailing or delivering a true copy thereof to such owner.
11 Similarly, if the owner petitions the county commission
12 in accordance herewith, he or she shall likewise notify
13 the tax commissioner and the assessor of that fact. It
14 shall be the affirmative burden of the petitioning party
15 to clearly show that the matters raised in the petition
16 were newly discovered since the first day of September,
17 one thousand nine hundred eighty-six and were there-
18 tofore unknown to the parties so petitioning.

19 (b) The assessor shall petition the county commission
20 to adjust the appraised value of any parcel where that
21 value appears to be clearly in error or based upon
22 inconsistencies in valuation procedures, trends in
23 valuation, clerical errors or other cause. Notice of any
24 petition filed by the assessor shall be given to any
25 affected owner and the tax commissioner. A hearing
26 held pursuant to such petition shall be governed by the
27 same procedures described for review and hearings as
28 provided for in section eight of this article.

§11-1B-16. Reimbursement of costs to assessor and sheriff.

1 Except for the mailing required by subsection (c),
2 section six of this article, the assessor and sheriff shall
3 be reimbursed by the tax commissioner for the postage
4 expended by either of them to mail any notices required
5 to be mailed by such assessor or sheriff by this article.
6 Such forms and envelopes as may be required shall be
7 furnished by the tax commissioner.

§11-1B-17. Report by county commission required; reports to Legislature.

1 The county commission shall make a report to the tax
2 commissioner on or before the thirty-first day of

3 December, one thousand nine hundred eighty-six, of the
4 number of hearings held by it in review of any and all
5 appraisals and any adjustments in valuation made by
6 the county commission. The tax commissioner shall
7 provide a summary of such reports to the President of
8 the Senate and the Speaker of the House of Delegates
9 on or before the fifteenth day of January, one thousand
10 nine hundred eighty-seven.

**§11-1B-18. Appraisal of property; date of implementa-
tion; assessor to make assessments.**

1 (a) All property as defined in section three of this
2 article shall be appraised at its true and actual value
3 as that term is defined in subsection (i), section three,
4 article one-a of this chapter.

5 (b) Upon completion of the review procedures pro-
6 vided in this article, and after certification by the tax
7 commissioner to the governor, President of the Senate
8 and Speaker of the House of Delegates that, with the
9 exception of those matters pending in the circuit courts
10 of this state or on appeal to the supreme court of
11 appeals, said review procedures have been substantially
12 complied with and further that the results thereof are
13 substantially correct, the final valuations arrived at, by,
14 and through the appraisal process to establish value of
15 all property for the year one thousand nine hundred
16 eighty-three, as provided for in article one-a of this
17 chapter and by this article, shall be and the same are
18 hereby directed to be used for ad valorem property
19 taxation in the year for which lien would attach on the
20 first day of July, one thousand nine hundred eighty-
21 seven. Such valuations shall be adjusted by the assessor
22 to reflect consideration of such substitutions, alterations,
23 accretions, improvements, additions, replacements,
24 destructions, removals, casualties, acts of God, waste or
25 like occurrences or circumstances, as well as economic
26 and other factors which result in or cause an increase
27 or decrease in the value of any such property or any
28 other divisions, redivision or other change in such
29 property since its reappraisal for the year one thousand
30 nine hundred eighty-three.

31 In the implementation of such values, the assessor of
32 each of the several counties shall assess the property
33 subject to ad valorem taxation (other than public utility
34 property) in the manner and subject to the procedures
35 for return, assessment, equalization and review hereto-
36 fore provided in this code, at sixty percent of the market
37 value less such exemptions and allowance for phase-in
38 which may be applicable.

39 With respect to property, the market value of which
40 has changed since the reappraisal, the assessor shall
41 enter on the computer network provided for by section
42 twenty-one, article one-a of this chapter, the basis of any
43 change in value utilized in such assessment.

44 With respect to property not subject to reappraisal at
45 the time of the reappraisal, or property on which
46 improvements have been made, the assessor shall use as
47 a basis for phase-in of the reappraisal, the statewide
48 phase-in rate promulgated by the tax commissioner for
49 like property.

50 (c) The tax commissioner shall be provided by the
51 assessor with any information, findings, or reasons
52 relied upon by the assessor in increasing or decreasing
53 values as a result of economic or other factors if applied
54 by the assessor to any species or class of property
55 generally or uniformly.

CHAPTER 24

(Com. Sub. for S. B. 3—By Mr. Tonkovich, Mr. President,
and Senators Tucker, Holmes, B. Williams, Loehr, Shaw, Tomblin,
Whitacre, R. Williams, Jones, Stacy, Ash, Rogers, Chafin and Fanning)

[Passed May 22, 1986; in effect June 1, 1986. Vetoed by the Governor. Passed over veto.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and five-a, article twelve, chapter twenty-nine of said code; to amend and reenact section fourteen-a, article six, chapter thirty-three of said code; and to amend chap-

ter twenty-nine of said code by adding thereto a new article, designated article twelve-a, all relating generally to the liability of the political subdivisions of the state and certain other entities and providing for insurance coverage therefor; the authority of the several county boards of education with respect to such insurance; removing the requirement of waiving the defense of governmental immunities by insurers; setting forth the powers and duties of the state board of risk and insurance management; permitting insurers of political subdivisions to assert certain statutory immunities as defenses to claims or suits; authorizing such board to provide property and liability insurance to political subdivisions and certain charitable, quasi-governmental or public service organizations; setting forth the definition of certain terms used with respect thereto; establishing the governmental tort claims and insurance reform act and a short title and the purposes therefor and certain legislative findings with respect thereto; providing certain definitions for terms used within said act; prescribing the various instances or areas of tort liability of certain political subdivisions and other entities and the employees thereof; specifying and establishing certain immunities from tort liability for such political subdivisions and their employees; limiting the amount of recovery by plaintiffs in certain cases involving noneconomic losses or damages; providing for time limits during which certain actions are to be brought; prohibiting specifying the amount of damages sought in the ad damnum clause of certain complaints; prohibiting recovery of punitive damages in certain cases; providing for relief in addition to relief authorized by said article; authorizing the settlement of claims by political subdivisions; restricting the amount of recovery for amounts paid through contracts of insurance; authorizing subrogation for the benefit of political subdivisions in certain cases; establishing certain rules with respect to joint or several liability in cases of multiple defendants and the amount of recovery for each; establishing certain rules with respect to determining the amount of economic loss in such cases; exempting the property of political subdivisions from execution and providing for the manner of payment of certain judgments by such political subdivisions; providing for the defense of

employees of political subdivisions; requiring that such employees be indemnified and held harmless in certain instances; permitting political subdivisions to recover from their employees for the cost of defense and other costs and judgments in certain cases; providing for certain rules with respect to venue in actions against political subdivisions and for service of process; requiring that such actions be maintained in the name of the real party or parties in interest; establishing certain rules with respect to the applicability of other laws and statutes of this state and of certain rules of procedure; establishing rules for prospective applicability only; authorizing political subdivisions to enter into certain consent judgments or settlements and establishing certain rules and procedures with respect thereto; authorizing such political subdivisions to expend public funds for the procurement of liability insurance or to become self-insured with respect to certain hazards or risks; providing certain limitations upon liability insurance rates and upon the amounts by which such insurance premiums or rates may be increased; restricting the right of insurance carriers to cancel the liability insurance coverage of certain political subdivisions; requiring the filing of certain information by the carriers of liability insurance when application is made to the insurance commissioner for rate or premium increases; the authority of such commissioner to approve or disapprove such request for rate or premium increase; requiring such commissioner to promulgate rules and regulations with respect to such rate filings, rates, cancellations and the establishment of associations or groups or pools for the purpose of purchasing such insurance; authorizing the establishment of such groups, pools or associations; providing certain rules for the construction, applicability and severability of the provisions of said article twelve-a; and repealing the requirement that public liability insurance policies issued to governmental entities or political subdivisions waive the immunities applicable to such entities or subdivisions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five and

five-a, article twelve, chapter twenty-nine of said code be amended and reenacted; that section fourteen-a, article six, chapter thirty-three of said code be amended and reenacted; and that chapter twenty-nine of said code be amended by adding thereto a new article, designated article twelve-a, all to read as follows:

Chapter

18. Education.

29. Miscellaneous Boards and Officers.

33. Insurance.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter and
2 the rules and regulations of the state board, shall have
3 authority:

4 (1) To control and manage all of the schools and school
5 interests for all school activities and upon all school
6 property, whether owned or leased by the county, including
7 the authority to require that records be kept of all receipts
8 and disbursements of all funds collected or received by any
9 principal, teacher, student or other person in connection
10 therewith, any programs, activities or other endeavors of
11 any nature operated or carried on by or in the name of the
12 school, or any organization or body directly connected with
13 the school, to audit such records and to conserve such funds,
14 which shall be deemed quasi-public moneys, including
15 securing surety bonds by expenditure of board moneys;

16 (2) To establish schools, from preschool through high
17 school, inclusive of vocational schools; and to establish
18 schools and programs, or both, for post high school
19 instruction, subject to approval of the state board of
20 education;

21 (3) To close any school which is unnecessary and to assign
22 the pupils thereof to other schools: *Provided*, That such
23 closing shall be officially acted upon and teachers and
24 service personnel involved notified on or before the first
25 Monday in April, in the same manner as provided in section
26 four of this article, except in an emergency, subject to the
27 approval of the state superintendent, or under subdivision

28 (5) of this section;

29 (4) To consolidate schools;

30 (5) To close any elementary school whose average daily
31 attendance falls below twenty pupils for two months in
32 succession and send the pupils to other schools in the
33 district or to schools in adjoining districts. If the teachers in
34 the school so closed are not transferred or reassigned to
35 other schools, they shall receive one month's salary;

36 (6) (a) To provide at public expense adequate means of
37 transportation, including transportation across county
38 lines, for all children of school age who live more than two
39 miles distance from school by the nearest available road; to
40 provide at public expense and according to such regulations
41 as the board may establish, adequate means of
42 transportation for school children participating in board-
43 approved curricular and extracurricular activities; and to
44 provide in addition thereto, at public expense, by rules and
45 regulations and within the available revenues,
46 transportation for those within two miles distance; to
47 provide in addition thereto, at no cost to the board and
48 according to rules and regulations established by the board,
49 transportation for participants in projects operated,
50 financed, sponsored or approved by the commission on
51 aging: *Provided*, That all costs and expenses incident in any
52 way to transportation for projects connected with the
53 commission on aging shall be borne by such commission, or
54 the local or county chapter thereof: *Provided, however*,
55 That in all cases the buses or other transportation facilities
56 owned by the board of education shall be driven or operated
57 only by drivers regularly employed by the board of
58 education: *Provided further*, That buses shall be used for
59 extracurricular activities as herein provided only when the
60 insurance provided for by this section shall have been
61 effected;

62 (b) To enter into agreements with one another to
63 provide, on a cooperative basis, adequate means of
64 transportation across county lines for children of school age
65 subject to the conditions and restrictions of subdivisions (6)
66 and (8) of this section;

67 (7) To lease school buses operated only by drivers
68 regularly employed by the board to public and private
69 nonprofit organizations or private corporations to

70 transport school-age children to and from camps or
71 educational activities in accordance with rules and
72 regulations established by the board. All costs and expenses
73 incurred by or incidental to the transportation of such
74 children shall be borne by the lessee;

75 (8) To provide at public expense for insurance against
76 the negligence of the drivers of school buses, trucks or other
77 vehicles operated by the board; and if the transportation of
78 pupils be contracted, then the contract therefor shall
79 provide that the contractor shall carry insurance against
80 negligence in such an amount as the board shall specify;

81 (9) To provide solely from county funds for all regular
82 full-time employees of the board all or any part of the cost of
83 a group plan or plans of insurance coverage not provided or
84 available under the West Virginia public employees
85 insurance act;

86 (10) To employ teacher aides, to provide in-service
87 training for teacher aides, the training to be in accordance
88 with rules and regulations of the state board and, in the case
89 of service personnel assuming duties as teacher aides in
90 exceptional children's programs, to provide a four-clock-
91 hour program of training prior to such assignment which
92 shall, in accordance with rules and regulations of the state
93 board, consist of training in areas specifically related to the
94 education of exceptional children;

95 (11) To establish and conduct a self-supporting
96 dormitory for the accommodation of the pupils attending a
97 high school or participating in a post high school program
98 and of persons employed to teach therein;

99 (12) To employ legal counsel;

100 (13) To provide appropriate uniforms for school service
101 personnel;

102 (14) To provide at public expense and under regulations
103 as established by any county board of education for the
104 payment of traveling expenses incurred by any person
105 invited to appear to be interviewed concerning possible
106 employment by such county board of education;

107 (15) To allow or disallow their designated employees to
108 use publicly provided carriage to travel from their
109 residences to their workplace and return: *Provided*, That
110 such usage is subject to the supervision of such board and is
111 directly connected with and required by the nature and in

112 the performance of such employee's duties and
113 responsibilities; and

114 (16) To provide, at public expense, adequate public
115 liability insurance, including professional liability
116 insurance for board employees.

117 "Quasi-public fund" as used herein means any money
118 received by any principal, teacher, student or other person
119 for the benefit of the school system as a result of curricular
120 or noncurricular activities.

121 The board of each county shall expend under such
122 regulations as it establishes for each child an amount not to
123 exceed the proportion of all school funds of the district that
124 each child would be entitled to receive if all the funds were
125 distributed equally among all the children of school age in
126 the district upon a per capita basis.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

12. State Insurance.

12A. Governmental Tort Claims and Insurance Reform Act.

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

§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 education.

§29-12-5. Powers and duties of board.

1 (a) The board shall have general supervision and control
2 over the insurance of all state property, activities and
3 responsibilities, including the acquisition and cancellation
4 thereof; determination of amount and kind of coverage,
5 including, but not limited to, deductible forms of insurance
6 coverage, inspections or examinations relating thereto,
7 reinsurance, and any and all matters, factors and
8 considerations entering into negotiations for advantageous
9 rates on and coverage of all such state property, activities
10 and responsibilities. Any policy of insurance purchased or
11 contracted for by the board shall provide that the insurer
12 shall be barred and estopped from relying upon the
13 constitutional immunity of the state of West Virginia
14 against claims or suits: *Provided*, That nothing herein shall

15 bar the insurer of political subdivisions from relying upon
16 any statutory immunity granted such political subdivisions
17 against claims or suits. The board may enter into any
18 contracts necessary to the execution of the powers granted
19 to it by this article. It shall endeavor to secure the maximum
20 of protection against loss, damage or liability to state
21 property and on account of state activities and
22 responsibilities by proper and adequate insurance coverage
23 through the introduction and employment of sound and
24 accepted methods of protection and principles of insurance.
25 It is empowered and directed to make a complete survey of
26 all presently owned and subsequently acquired state
27 property subject to insurance coverage by any form of
28 insurance, which survey shall include and reflect
29 inspections, appraisals, exposures, fire hazards,
30 construction, and any other objectives or factors affecting
31 or which might affect the insurance protection and
32 coverage required. It shall keep itself currently informed on
33 new and continuing state activities and responsibilities
34 within the insurance coverage herein contemplated. The
35 board shall work closely in cooperation with the state fire
36 marshal's office in applying the rules and regulations of
37 that office insofar as the appropriations and other factors
38 peculiar to state property will permit. The board is given
39 power and authority to make rules and regulations
40 governing its functions and operations and the
41 procurement of state insurance, but shall not make or
42 promulgate any rules or regulations in contravention of or
43 inconsistent with the laws or rules and regulations
44 governing the office of insurance commissioner of West
45 Virginia.

46 The board is hereby authorized and empowered to
47 negotiate and effect settlement of any and all insurance
48 claims arising on or incident to losses of and damages to
49 state properties, activities and responsibilities hereunder
50 and shall have authority to execute and deliver proper
51 releases of all such claims when settled. The board may
52 adopt rules and procedures for handling, negotiating and
53 settlement of all such claims. All such settlements and
54 releases shall be effected with the knowledge and consent of
55 the attorney general.

56 (b) If requested by a political subdivision or by a

57 charitable or public service organization, the board is
58 authorized to provide property and liability insurance to
59 the political subdivisions or such organizations to insure
60 their property, activities and responsibilities. Such board is
61 authorized to enter into any necessary contract of insurance
62 to further the intent of this subsection.

63 The property insurance provided by the board, pursuant
64 to this subsection, may also include insurance on property
65 leased to or loaned to the political subdivision or such
66 organization which is required to be insured under a
67 written agreement.

68 The cost of this insurance, as determined by the board,
69 shall be paid by the political subdivision or the organization
70 and may include administrative expenses. All funds
71 received by the board shall be deposited in the West
72 Virginia consolidated investment pool with the interest
73 income a proper credit to such property insurance trust
74 fund or liability insurance trust fund, as applicable.

75 Political subdivision as used in this subsection shall have
76 the same meaning as in section three, article twelve-a of this
77 chapter.

78 Charitable or public service organization as used in this
79 subsection means a bona fide, not for profit, tax-exempt,
80 benevolent, educational, philanthropic, humane, patriotic,
81 civic, religious, eleemosynary, incorporated or
82 unincorporated association or organization or a rescue unit
83 or other similar volunteer community service organization
84 or association, but does not include any nonprofit
85 association or organization, whether incorporated or not,
86 which is organized primarily for the purposes of
87 influencing legislation or supporting or promoting the
88 campaign of any candidate for public office.

**§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.**

1 In accordance with the provisions of this article, the state
2 board of risk and insurance management shall provide
3 appropriate professional or other liability insurance for all
4 county boards of education, teachers, supervisory and
5 administrative staff members, service personnel, county

6 superintendents of schools and school board members and
7 for all employees and officers of the state department of
8 corrections. Said insurance shall cover any claim, demand,
9 action, suit or judgment by reason of alleged negligence or
10 other acts resulting in bodily injury or property damage to
11 any person within or without any school building or
12 correctional institution if, at the time of the alleged injury,
13 the teacher, supervisor, administrator, service personnel
14 employee, county superintendent, school board member, or
15 employee or officer of the department of corrections was
16 acting in the discharge of his duties, within the scope of his
17 office, position or employment, under the direction of the
18 board of education or commissioner of corrections or in an
19 official capacity as a county superintendent or as a school
20 board member or as commissioner of corrections. Such
21 insurance coverage shall be in an amount to be determined
22 by the state board of risk and insurance management, but in
23 no event less than one million dollars for each occurrence.
24 In addition, each county board of education shall purchase,
25 through the board of risk and insurance management,
26 excess coverage of at least five million dollars for each
27 occurrence. The cost of this excess coverage will be paid by
28 the respective county boards of education. Any insurance
29 purchased under this section shall be obtained from a
30 company licensed to do business in this state.

31 The insurance policy shall include comprehensive
32 coverage, personal injury coverage, malpractice coverage,
33 corporal punishment coverage, legal liability coverage as
34 well as a provision for the payment of the cost of attorney's
35 fees in connection with any claim, demand, action, suit or
36 judgment arising from such alleged negligence or other act
37 resulting in bodily injury under the conditions specified in
38 this section.

39 The county superintendent and other school personnel
40 shall be defended by the county board or an insurer in the
41 case of suit, unless the act or omission shall not have been
42 within the course or scope of employment or official
43 responsibility or was motivated by malicious or criminal
44 intent.

**ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE
REFORM ACT.**

§29-12A-1. Short title; purposes.

- §29-12A-2. Legislative findings.
- §29-12A-3. Definitions.
- §29-12A-4. Governmental and proprietary functions of political subdivisions; liability for damages.
- §29-12A-5. Immunities from liability.
- §29-12A-6. Limitation of actions; specification of amount of damages not allowed.
- §29-12A-7. Punitive damages not allowed; limitation on noneconomic loss; joint and several liability.
- §29-12A-8. Suits.
- §29-12A-9. Settlement of defense of suit; effect of liability insurance.
- §29-12A-10. Enforcement of judgment.
- §29-12A-11. Defense and indemnification of employees; settlement.
- §29-12A-12. Recovery of payments from employees.
- §29-12A-13. Venue; parties; real party in interest; service of process.
- §29-12A-14. Application of West Virginia laws and statutes and rules of procedure.
- §29-12A-15. Exempt claim.
- §29-12A-16. Procurement of liability insurance and self-insurance.
- §29-12A-17. Liability insurance rates; rate filings; cancellations; group insurance.
- §29-12A-18. Applicability.

§29-12A-1. Short title; purposes.

- 1 This article shall be known and may be cited as “The
- 2 Governmental Tort Claims and Insurance Reform Act.”
- 3 Its purposes are to limit liability of political subdivisions
- 4 and provide immunity to political subdivisions in certain
- 5 instances and to regulate the costs and coverage of
- 6 insurance available to political subdivisions for such
- 7 liability.

§29-12A-2. Legislative findings.

- 1 The Legislature finds and declares that the political
- 2 subdivisions of this state are unable to procure adequate
- 3 liability insurance coverage at a reasonable cost due to: The
- 4 high cost in defending such claims, the risk of liability
- 5 beyond the affordable coverage, and the inability of
- 6 political subdivisions to raise sufficient revenues for the
- 7 procurement of such coverage without reducing the quantity
- 8 and quality of traditional governmental services.
- 9 Therefore, it is necessary to establish certain immunities
- 10 and limitations with regard to the liability of political
- 11 subdivisions and their employees, to regulate the insurance
- 12 industry providing liability insurance to them, and thereby
- 13 permit such political subdivisions to provide necessary and

14 needed governmental services to its citizens within the
15 limits of their available revenues.

§29-12A-3. Definitions.

1 As used in this article:

2 (a) "Employee" means an officer, agent, employee, or
3 servant, whether compensated or not, whether full-time or
4 not, who is authorized to act and is acting within the scope
5 of his or her employment for a political subdivision.
6 "Employee" includes any elected or appointed official of a
7 political subdivision. "Employee" does not include an
8 independent contractor of a political subdivision.

9 (b) "Municipality" means any incorporated city, town
10 or village and all institutions, agencies or instrumentalities
11 of a municipality.

12 (c) "Political subdivision" means any county
13 commission, municipality and county board of education;
14 any separate corporation or instrumentality established by
15 one or more counties or municipalities, as permitted by law;
16 any instrumentality supported in most part by
17 municipalities; any public body charged by law with the
18 performance of a government function and whose
19 jurisdiction is coextensive with one or more counties, cities
20 or towns; a combined city-county health department
21 created pursuant to article two, chapter sixteen of this code;
22 public service districts; and other instrumentalities
23 including, but not limited to, volunteer fire departments
24 and emergency service organizations as recognized by an
25 appropriate public body and authorized by law to perform a
26 government function: *Provided*, That hospitals of a
27 political subdivision and their employees are expressly
28 excluded from the provisions of this article.

29 (d) "Scope of employment" means performance by an
30 employee acting in good faith within the duties of his or her
31 office or employment or tasks lawfully assigned by a
32 competent authority but does not include corruption or
33 fraud.

34 (e) "State" means the state of West Virginia, including,
35 but not limited to, the Legislature, the supreme court of
36 appeals, the offices of all elected state officers, and all
37 departments, boards, offices, commissions, agencies,
38 colleges, and universities, institutions, and other
39 instrumentalities of the state of West Virginia. "State" does

40 not include political subdivisions.

§29-12A-4. Governmental and proprietary functions of political subdivisions; liability for damages.

1 (a) The distinction existing between governmental
2 functions and proprietary functions of political
3 subdivisions is not affected by the provisions of this article;
4 however, the provisions of this article shall apply to both
5 governmental and proprietary functions.

6 (b) (1) Except as provided in subsection (c) of this
7 section, a political subdivision is not liable in damages in a
8 civil action for injury, death, or loss to persons or property
9 allegedly caused by any act or omission of the political
10 subdivision or an employee of the political subdivision in
11 connection with a governmental or proprietary function:
12 *Provided*, That this article shall not restrict the availability
13 of mandamus, injunction, prohibition, and other
14 extraordinary remedies.

15 (2) Subject to statutory limitations upon their venue
16 and jurisdiction, the circuit courts have jurisdiction to hear
17 and determine civil actions governed by or brought
18 pursuant to this article.

19 (c) Subject to sections five and six of this article, a
20 political subdivision is liable in damages in a civil action for
21 injury, death, or loss to persons or property allegedly caused
22 by an act or omission of the political subdivision or of any of
23 its employees in connection with a governmental or
24 proprietary function, as follows:

25 (1) Except as otherwise provided in this article, political
26 subdivisions are liable for injury, death, or loss to persons or
27 property caused by the negligent operation of any vehicle
28 by their employees when the employees are engaged within
29 the scope of their employment and authority.

30 (2) Political subdivisions are liable for injury, death, or
31 loss to persons or property caused by the negligent
32 performance of acts by their employees while acting within
33 the scope of employment.

34 (3) Political subdivisions are liable for injury, death, or
35 loss to persons or property caused by their negligent failure
36 to keep public roads, highways, streets, avenues, alleys,
37 sidewalks, bridges, aqueducts, viaducts, or public grounds
38 within the political subdivisions open, in repair, or free
39 from nuisance, except that it is a full defense to such

40 liability, when a bridge within a municipality is involved,
41 that the municipality does not have the responsibility for
42 maintaining or inspecting the bridge.

43 (4) Political subdivisions are liable for injury, death, or
44 loss to persons or property that is caused by the negligence
45 of their employees and that occurs within or on the grounds
46 of buildings that are used by such political subdivisions,
47 including, but not limited to, office buildings and
48 courthouses, but not including jails, places of juvenile
49 detention, workhouses, or any other detention facility.

50 (5) In addition to the circumstances described in
51 subdivisions (1) to (4), subsection (c) of this section, a political
52 subdivision is liable for injury, death, or loss to persons or
53 property when liability is expressly imposed upon the
54 political subdivision by a provision of this code. Liability
55 shall not be construed to exist under another section of this
56 code merely because a responsibility is imposed upon a
57 political subdivision or because of a general authorization
58 that a political subdivision may sue and be sued.

§29-12A-5. Immunities from liability.

1 (a) A political subdivision is immune from liability if a
2 loss or claim results from:

- 3 (1) Legislative or quasi-legislative functions;
- 4 (2) Judicial, quasi-judicial or prosecutorial functions;
- 5 (3) Execution or enforcement of the lawful orders of any
6 court;
- 7 (4) Adoption or failure to adopt a law, including, but not
8 limited to, any statute, charter provision, ordinance,
9 resolution, rule, regulation or written policy;
- 10 (5) Civil disobedience, riot, insurrection or rebellion or
11 the failure to provide, or the method of providing, police,
12 law enforcement or fire protection;
- 13 (6) Snow or ice conditions or temporary or natural
14 conditions on any public way or other public place due to
15 weather conditions, unless the condition is affirmatively
16 caused by the negligent act of a political subdivision;
- 17 (7) Natural conditions of unimproved property of the
18 political subdivision;
- 19 (8) Assessment or collection of taxes lawfully imposed
20 or special assessments, license or registration fees or other
21 fees or charges imposed by law;
- 22 (9) Licensing powers or functions including, but not

23 limited to, the issuance, denial, suspension or revocation of
24 or failure or refusal to issue, deny, suspend or revoke any
25 permit, license, certificate, approval, order or similar
26 authority;

27 (10) Inspection powers or functions, including failure to
28 make an inspection, or making an inadequate inspection, of
29 any property, real or personal, to determine whether the
30 property complies with or violates any law or contains a
31 hazard to health or safety;

32 (11) Any claim covered by any workers' compensation
33 law or any employer's liability law;

34 (12) Misrepresentation, if unintentional;

35 (13) Any court-ordered or administratively approved
36 work release or treatment or rehabilitation program;

37 (14) Provision, equipping, lawful operation or
38 maintenance of any prison, jail or correctional facility, or
39 injuries resulting from the parole or escape of a prisoner;

40 (15) Any claim or action based on the theory of
41 manufacturer's products liability or breach of warranty or
42 merchantability or fitness for a specific purpose, either
43 expressed or implied;

44 (16) The operation of dumps, sanitary landfills, and
45 facilities where conducted directly by a political
46 subdivision; or

47 (17) The issuance of revenue bonds or the refusal to
48 issue revenue bonds.

49 (b) An employee of a political subdivision is immune
50 from liability unless one of the following applies:

51 (1) His or her acts or omissions were manifestly outside
52 the scope of employment or official responsibilities;

53 (2) His or her acts or omissions were with malicious
54 purpose, in bad faith, or in a wanton or reckless manner; or

55 (3) Liability is expressly imposed upon the employee by
56 a provision of this code.

57 (c) The immunity conferred upon an employee by
58 subsection (b) of this section does not affect or limit any
59 liability of a political subdivision for an act or omission of
60 the employee.

§29-12A-6. Limitation of actions; specification of amount of damages not allowed.

1 (a) An action against a political subdivision to recover

2 damages for injury, death, or loss to persons or property
3 allegedly caused by any act or omission in connection with a
4 governmental or proprietary function, except as provided
5 in subsection (b) of this section, shall be brought within two
6 years after the cause of action arose or after the injury,
7 death or loss was discovered or reasonably should have
8 been discovered, whichever last occurs or within any
9 applicable shorter period of time for bringing the action
10 provided by this code. This section applies to actions
11 brought against political subdivisions by all persons,
12 governmental entities, and the state.

13 (b) An action against a political subdivision to recover
14 damages for injury, death, or loss to a minor, brought by or
15 on behalf of a minor who was under the age of ten years at
16 the time of such injury, shall be commenced within two
17 years after the cause of action arose or after the injury,
18 death or loss was discovered or reasonably should have
19 been discovered, whichever last occurs, or prior to the
20 minor's twelfth birthday, whichever provides the longer
21 period.

22 (c) The periods of limitations set forth in this section
23 shall be tolled for any period during which the political
24 subdivision or its representative has committed fraud or
25 collusion by concealing or misrepresenting material facts
26 about the injury.

27 (d) In the complaint filed in a civil action against a
28 political subdivision or an employee of a political
29 subdivision to recover damages for injury, death, or loss to
30 persons or property allegedly caused by an act or omission
31 of such political subdivision or employee, whether filed in
32 an original action, cross-claim, counterclaim, third-party
33 claim, or claim for subrogation, the complainant shall
34 include a demand for a judgment for the damages that the
35 judge in a nonjury trial or the jury in a jury trial finds that
36 the complainant is entitled to be awarded, but shall not
37 specify in the demand any monetary amount for damages
38 sought.

§29-12A-7. Punitive damages not allowed; limitation on non-economic loss; joint and several liability.

1 Notwithstanding any other provisions of this code or
2 rules of a court to the contrary, in an action against a

3 political subdivision or its employee to recover damages for
4 injury, death, or loss to persons or property for injury,
5 death, or loss to persons or property caused by an act or
6 omission of such political subdivision or employee:

7 (a) In any civil action involving a political subdivision
8 or any of its employees as a party defendant, an award of
9 punitive or exemplary damages against such political
10 subdivision is prohibited.

11 (b) There shall not be any limitation on compensatory
12 damages that represent the economic loss of the person who
13 is awarded the damages. However, damages awarded that
14 arise from the same cause of action, transaction or
15 occurrence, or series of transactions or occurrences that
16 represent noneconomic loss shall not exceed five hundred
17 thousand dollars in favor of any one person. The limitation
18 on damages that do not represent the economic loss of the
19 person who is awarded the damages provided in this
20 subsection does not apply to court costs that are awarded to
21 a plaintiff or to interest on a judgment rendered in favor of a
22 plaintiff in an action against a political subdivision or its
23 employees.

24 (c) In the trial of an action covered by the provisions of
25 this article involving multiple defendants, the jury shall be
26 required to report its findings to the court on a form
27 provided by the court which contains each of the possible
28 verdicts as determined by the court.

29 (d) In every such action, the court shall make findings as
30 to the total dollar amount awarded as damages to each
31 plaintiff. The court shall enter judgment of joint and several
32 liability against every defendant who bears twenty-five
33 percent or more of the negligence attributable to all
34 defendants. The court shall enter judgment of several, but
35 not joint, liability against and among all defendants who
36 bear less than twenty-five percent of the negligence
37 attributable to all defendants.

38 (e) Each defendant against whom a judgment of joint
39 and several liability is entered in an action pursuant to
40 subsection (d) of this section is liable to each plaintiff for all
41 or any part of the total dollar amount awarded regardless of
42 the percentage of negligence attributable to him. A right of
43 contribution exists in favor of each defendant who has paid
44 to a plaintiff more than the percentage of the dollar amount

45 awarded attributable to him relative to the percentage of
46 negligence attributable to him. The total amount of
47 recovery for contribution is limited to the amount paid by
48 the defendant to a plaintiff in excess of the percentage of the
49 total dollar amount awarded attributable to him relative to
50 the percentage of negligence attributable to him. No right of
51 contribution exists against any defendant who entered into
52 a good faith settlement with the plaintiff prior to the jury's
53 report of its findings to the court or the court's findings as to
54 the total dollar amount awarded as damages.

55 (f) Where a right of contribution exists in an action
56 pursuant to subsection (e) of this section, the findings of the
57 court or jury as to the percentage of negligence and liability
58 of the several defendants to the plaintiff shall be binding
59 among such defendants as determining their rights of
60 contribution.

§29-12A-8. Suits.

1 Any person having a claim against a political subdivision
2 within the scope of this article may sue such political
3 subdivision for any appropriate relief including the award
4 of money damages within the liability limitations
5 established in section seven of this article.

§29-12A-9. Settlement or defense of suit; effect of liability insurance.

1 (a) If a policy or contract of liability insurance covering
2 a political subdivision or its employees is applicable, the
3 terms of the policy govern the rights and obligations of the
4 political subdivision and the insurer with respect to the
5 investigation, settlement, payment and defense of suits
6 against the political subdivision, or its employees, covered
7 by the policy. The insurer may not enter into a settlement
8 for an amount which exceeds the insurance coverage.

9 (b) A political subdivision, or its employees, are not
10 liable for any costs, judgments or settlements paid through
11 an applicable contract or policy of insurance.

12 (c) A political subdivision has the right of indemnity
13 against the insurer issuing any applicable contract or policy
14 of insurance to the monetary limit of the contract or policy
15 of insurance.

§29-12A-10. Enforcement of judgment.

1 (a) Real or personal property, and moneys, accounts,
2 deposits, or investments of a political subdivision are not
3 subject to execution, judicial sale, garnishment, or
4 attachment to satisfy a judgment rendered against a
5 political subdivision in a civil action to recover damages for
6 injury, death, or loss to persons or property caused by an act
7 or omission of the political subdivision or any of its
8 employees.

9 (b) Such judgments shall be paid from funds of the
10 political subdivisions that have been appropriated for that
11 purpose. However, if sufficient funds are not currently
12 appropriated for the payment of judgments, the fiscal
13 officer of a political subdivision shall certify the amount of
14 any unpaid judgments to the taxing authority of the
15 political subdivision for inclusion in the next succeeding
16 budget and annual appropriation measure and payment in
17 the next succeeding fiscal year.

18 (c) If the judgment is obtained against a political
19 subdivision that has procured a contract or policy of
20 liability or indemnity insurance protection, the holder of
21 the judgment may use the methods of collecting the
22 judgment which are provided by the policy or contract or
23 law to the extent of the limits of coverage provided.

**§29-12A-11. Defense and indemnification of employees;
settlement.**

1 (a) (1) Except as otherwise provided in this section, a
2 political subdivision shall provide for the defense of an
3 employee, in any state or federal court, in any civil action or
4 proceeding to recover damages for injury, death, or loss to
5 persons or property allegedly caused by an act or omission
6 of the employee if the act or omission occurred or is alleged
7 to have occurred while the employee was acting in good
8 faith and not manifestly outside the scope of his
9 employment or official responsibilities. Amounts expended
10 by a political subdivision in the defense of its employees
11 shall be from funds appropriated for this purpose or
12 pursuant to the contractual agreement between the insurer
13 and the political subdivision. The duty to provide for the
14 defense of an employee specified in this subsection does not

15 apply in a civil action or proceeding that is commenced by
16 or on behalf of a political subdivision.

17 (2) Except as otherwise provided in this section, a
18 political subdivision shall indemnify and hold harmless an
19 employee in the amount of any judgment that is obtained
20 against the employee in a state or federal court or as a result
21 of a law of a foreign jurisdiction and that is for damages for
22 injury, death, or loss to persons or property caused by an act
23 or omission of such employee, if at the time of the act or
24 omission the employee was acting in good faith and within
25 the scope of his employment or official responsibilities.

26 (b) (1) A political subdivision may enter into a consent
27 judgment or settlement and may secure releases from
28 liability for itself or an employee, with respect to any claim
29 for injury, death, or loss to persons or property caused by an
30 act or omission of such political subdivision or employee.

31 (2) No action or appeal of any kind shall be brought by
32 any person, including any employee or a taxpayer, with
33 respect to the decision of a political subdivision pursuant to
34 subdivision (1), subsection (b) of this section whether to
35 enter into a consent judgment or settlement or to secure
36 releases, or concerning the amount and circumstances of
37 a consent judgment or settlement. Amounts expended for
38 any settlement shall be from funds appropriated for this
39 purpose or pursuant to the contractual agreement
40 between the insurer and the political subdivision.

41 (c) If a political subdivision refuses to provide an
42 employee with a defense in a civil action or proceeding
43 as described in subdivision (1), subsection (a) of this
44 section, the employee may file, in the circuit court of the
45 county in which the political subdivision is located, an
46 action seeking a determination as to the appropriateness
47 of the refusal of the political subdivision to provide him
48 or her with a defense under that subsection.

§29-12A-12. Recovery of payments from employees.

1 A political subdivision has the right to recover from an
2 employee for any claim or action under this article, or any
3 other claim or action, any payments made by it for any
4 judgment or settlement, or portion thereof, and costs or fees
5 by or on behalf of an employee's defense if it is shown that
6 the conduct of the employee which gave rise to the claim or

7 action was outside the scope of his employment or if the
8 employee fails to cooperate in good faith in the defense of
9 the claim or action. A judgment or settlement in an action or
10 claim under this article constitutes a complete bar to any
11 action by a claimant against an employee whose conduct
12 gave rise to the claim resulting in such judgment or
13 settlement.

§29-12A-13. Venue; parties; real party in interest; service of process.

1 (a) Actions against all political subdivisions within the
2 scope of this article shall be brought in the county in which
3 the situs of the political subdivision is located or in the
4 county in which the cause of action arose.

5 (b) Suits instituted pursuant to the provisions of this
6 article shall name as defendant the political subdivision
7 against which liability is sought to be established. In no
8 instance may an employee of a political subdivision acting
9 within the scope of his employment be named as defendant.

10 (c) All actions filed against a political subdivision shall
11 be filed in the name of the real party or parties in interest
12 and in no event may any claim be presented or recovery be
13 had under the right of subrogation.

14 (d) In suits against political subdivisions, the complaint
15 and summons shall be served in the manner prescribed by
16 law for the rules of civil procedure.

§29-12A-14. Application of West Virginia laws and statutes and rules of procedure.

1 The laws and statutes of this state and the rules of civil
2 procedure, as promulgated and adopted by the supreme
3 court of appeals, insofar as applicable and to the extent that
4 such rules are not inconsistent with the provisions of this
5 article, apply to and govern all actions brought under the
6 provisions of this article.

§29-12A-15. Exempt claim.

1 This article does not apply to any claim against any
2 political subdivision or its employees arising before the
3 effective date of this article. Any such claim may be
4 presented and enforced to the same extent and subject to
5 the same procedures and restrictions as if this article had
6 not been adopted.

§29-12A-16. Procurement of liability insurance and self-insurance.

1 (a) A political subdivision may use public funds to
2 secure insurance with respect to its potential liability and
3 that of its employees in damages in civil actions for injury,
4 death, or loss to persons or property allegedly caused by an
5 act or omission of the political subdivision or any of its
6 employees, including insurance coverage procured through
7 the state board of risk and insurance management. The
8 insurance may be at the limits, for the circumstances and
9 subject to the terms and conditions that are determined by
10 the political subdivision in its discretion.

11 The insurance may be for the period of time that is set
12 forth in specifications for competitive bids or, when
13 competitive bidding is not required, for the period of time
14 that is mutually agreed upon by the political subdivision
15 and insurance company. The period of time does not have to
16 be, but can be, limited to the fiscal cycle under which the
17 political subdivision is funded and operates.

18 (b) Regardless of whether a political subdivision
19 procures a policy or policies of liability insurance pursuant
20 to subsection (a) of this section or otherwise, the political
21 subdivision may establish and maintain a self-insurance
22 program relative to its potential liability and that of its
23 employees in damages in civil actions for injury, death, or
24 loss to persons or property allegedly caused by an act or
25 omission of the political subdivision or any of its employees.
26 If it so chooses, the political subdivision may contract with
27 any person, other political subdivision, or regional council
28 of governments for purposes of the administration of such a
29 program.

30 (c) Political subdivisions that have established self-
31 insurance programs relative to their potential liability and
32 that of their employees as described in subsection (b) of this
33 section may mutually agree that their self-insurance
34 programs will be jointly administered in a specified
35 manner.

36 (d) The purchase of liability insurance, or the
37 establishment and maintenance of a self-insurance
38 program, by a political subdivision does not constitute a
39 waiver of any immunity it may have pursuant to this article

40 or any defense of the political subdivision or its employees.

41 (e) The authorization for political subdivisions to secure
42 insurance and to establish and maintain self-insurance
43 programs as set out in subsections (a) and (b) in this section
44 are in addition to any other authority to secure insurance or
45 to establish and maintain self-insurance that is granted
46 pursuant to this code or the constitution of this state, and
47 they are not in derogation of any other authorization.

48 (f) The commissioner of insurance shall promulgate
49 legislative rules or regulations pursuant to chapter twenty-
50 nine-a of this code, setting forth guidelines relating to
51 self-insurance programs for political subdivisions.

**§29-12A-17. Liability insurance rates; rate filings;
cancellations; group insurance.**

1 (a) Liability insurance coverage for political
2 subdivisions in effect on the effective date of this article
3 shall not be reduced without the written consent of the
4 insured and the policy premiums for such coverage shall not
5 be increased by more than ten percent per annum. Such
6 coverage shall not be canceled except for:

7 (1) Failure to make premium payments in accordance
8 with the policy requirements;

9 (2) Fraud or substantial misrepresentation by the
10 insured in the procurement of the policy; or

11 (3) Substantial increase in the risk of loss to which the
12 insurer is exposed under the policy.

13 (b) Each casualty insurance rate filing relating to
14 liability insurance for political subdivisions shall be
15 accompanied by such information as the insurance
16 commissioner requires to determine claims payouts,
17 premium income, investment income, loss reserves, federal
18 and state credits, administrative and operating expenses,
19 profits, losses, and such other information deemed
20 necessary by the commissioner to determine the
21 profitability of such insurance business engaged in by the
22 company. Based upon such information, the commissioner
23 may approve or disapprove an increase in premiums
24 charged to the political subdivisions for such coverage or
25 may require that such premiums charged be decreased. The

26 commissioner shall have authority to disapprove any
27 casualty insurance rate filing which includes such coverage
28 to political subdivisions for failure to provide the
29 information prescribed herein.

30 (c) Any two or more political subdivisions shall have
31 authority to form an organization or association for the
32 purpose of purchasing casualty insurance on a group or
33 pooling basis.

34 Any insurer licensed to transact casualty insurance in
35 this state may issue group casualty insurance policies to any
36 organization, association or pool which is organized and
37 maintained under this section.

38 (d) The insurance commissioner shall promulgate
39 legislative rules or regulations pursuant to chapter twenty-
40 nine-a of this code setting forth guidelines relating to rate
41 filings, rates and cancellations with respect to insurance
42 companies transacting policies of casualty insurance with
43 political subdivisions and relating to establishment of
44 associations or pools for the purchase of group insurance
45 and the setting of group rates.

§29-12A-18. Applicability.

1 This article does not apply to, and shall not be construed
2 to apply to, the following:

3 (a) Civil actions that seek to recover damages from a
4 political subdivision or any of its employees for contractual
5 liability;

6 (b) Civil actions by an employee, or the collective
7 bargaining representative of an employee, against his or her
8 political subdivision relative to any matter that arises out of
9 the employment relationship between the employee and the
10 political subdivision;

11 (c) Civil actions by an employee of a political
12 subdivision against the political subdivision relative to
13 wages, hours, conditions, or other terms of his or her
14 employment;

15 (d) Civil actions by sureties, and the rights of sureties,
16 under fidelity or surety bonds;

17 (e) Civil claims based upon alleged violations of the
18 constitution or statutes of the United States except that the
19 provisions of section eleven of this article shall apply to
20 such claims or related civil actions.

CHAPTER 33. INSURANCE.**ARTICLE 6. THE INSURANCE POLICY.****§33-6-14a. Public liability insurance policies issued to charitable associations to contain provision for waiving of charitable immunity defense.**

1 Any policy or contract of public liability insurance
2 providing coverage for public liability sold, issued, or
3 delivered in this state to any religious or charitable
4 corporation or association, either directly or to the trustees
5 of such associations, shall be read so as to contain a
6 provision of endorsement whereby the company issuing
7 such policy waives, or agrees not to assert as a defense, on
8 behalf of the policyholder or any beneficiary thereof, to any
9 claim covered by the terms of such policy within the policy
10 limits, the immunity from liability of the insured by reason
11 of such insured's charitable status, unless such provision or
12 endorsement is rejected in writing by the named insured.

CHAPTER 25**(H. B. 154—By Delegate Roop)**

[Passed May 22, 1986; in effect from passage. Vetoed by the Governor. Passed over veto.]

AN ACT to amend and reenact section twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the commercial whitewater advisory board; providing for the restructure of the board; setting forth a limitation on the allocations; and establishing the date of termination of the board.

Be it enacted by the Legislature of West Virginia:

That section twenty-three-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.**§20-2-23a. Special studies of whitewater rafting zones to**

be conducted; creation of advisory commission to promulgate rules and regulations; special fees imposed; time limitation.

1 (a) The Legislature finds that the recent increase in
2 the number of persons engaging in the sport of white-
3 water rafting has resulted in overcrowding, safety and
4 ecological problems along areas and portions of rivers
5 and waters in this state necessitating the study,
6 investigation and regulation of whitewater rafting to
7 promote the safe and equitable enjoyment of this sport
8 by all persons seeking to engage in it as recreational
9 activity. The Legislature further finds it desirable to
10 require the director of the department of natural
11 resources, pending such study and investigation and the
12 promulgation of necessary rules and regulations appli-
13 cable to such areas and portions of rivers and waters,
14 to restrict, deny or postpone the issuance of licenses to
15 additional commercial whitewater outfitters seeking to
16 operate in such areas and portions of rivers and waters
17 in this state until the promulgation of such rules and
18 regulations applicable thereto and to provide for the
19 creation of an advisory board to promulgate such rules
20 and regulations.

21 (b) The director shall investigate and study commer-
22 cial whitewater rafting, outfitting and activities related
23 thereto, which rafting, outfitting or activities take place
24 along the rivers or waters of this state. The director
25 shall designate any such rivers or waters or any portion
26 thereof, which herein are referred to as "whitewater
27 zones" for which commercial whitewater rafting,
28 outfitting and activities are to be investigated and
29 studied, and shall determine the order and the periods
30 of time within which such investigations and studies are
31 to be conducted. The director shall first investigate and
32 study those whitewater zones which the director finds
33 to present serious problems requiring immediate
34 regulation, including without limitation, safety hazards
35 and problems of overcrowding or environmental misuse.

36 (c) Upon the filing of a written notice to be entered
37 upon the records of the department containing the
38 designation and reasonable description of the white-

39 water zone to be investigated and studied pursuant to
40 subsection (b) above, the director may not issue licenses
41 to additional commercial whitewater outfitters seeking
42 to operate in or for the whitewater zone described in the
43 notice. This limitation on additional licenses shall
44 continue until the director has completed investigation
45 and study of the whitewater zone designated in the
46 notice and the rules and regulations applicable to such
47 zone are promulgated in accordance with this section:
48 *Provided*, That the director may issue additional licenses
49 for such whitewater zones during the study period and
50 prior to the promulgation of the rules and regulations
51 applicable to a zone, if the director finds that such
52 license would not interfere with the conduct of the
53 pending investigation and study, and the issuance of
54 such additional license is in the best interests of persons
55 seeking to enjoy whitewater rafting and the interests of
56 the state in promotion of tourism and the recreational
57 and ecological use of the state's natural resources.

58 (d) The annual license fees set forth in section twenty-
59 six of this article for commercial whitewater outfitters
60 and such annual fee shall be two hundred fifty dollars
61 for each commercial whitewater outfitter. In addition to
62 such annual license fee, each commercial whitewater
63 outfitter, operating within a whitewater zone under
64 investigation and study as provided in subsection (c) of
65 this section, shall pay to the director the sum of two
66 hundred fifty dollars as a special study fee which shall
67 be paid within three months after the date of the notice
68 and designation of the whitewater zone to be studied.
69 The annual license fee and the special study fee may be
70 used to offset and pay for the expenses and costs of such
71 investigations and studies and the promulgation of rules
72 and regulations pursuant to this section.

73 (e) Upon official designation by the director of the
74 first whitewater zone to be studied as provided in
75 subsection (b) of this section, the director shall appoint
76 a commercial whitewater advisory board. Such board
77 shall consist of two staff employees of the department;
78 the commissioner of the department of commerce; the
79 superintendent of the New River Gorge National Park

80 or his designee; and three persons representing three
81 different licensed commercial whitewater outfitters
82 currently operating within the state: *Provided*, That one
83 person shall represent the small commercial whitewater
84 rafting outfitters in West Virginia which are those
85 outfitters who have a license allotment, as of the first
86 day of July, one thousand nine hundred eighty-five, of
87 less than one hundred persons on streams or rivers
88 where total use is limited; and three residents of the
89 state who represent the consumers of commercial
90 whitewater rafting in the state, one of whom shall
91 represent the private river users: *Provided, however*,
92 That for purposes of the appointment of the commercial
93 whitewater outfitters and consumer members of the
94 board, there shall be designated three regions within the
95 state as follows: Region one, the counties of Jackson,
96 Roane, Calhoun, Gilmer, Lewis, Upshur, Randolph,
97 Tucker, Barbour, Preston, Taylor, Monongalia, Marion,
98 Harrison, Doddridge, Ritchie, Wirt, Wood, Pleasants,
99 Tyler, Wetzel, Marshall, Ohio, Brooke and Hancock;
100 region two, the counties of Greenbrier, Pocahontas,
101 Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan,
102 Berkeley and Jefferson; region three, the counties of
103 Mason, Putnam, Kanawha, Clay, Braxton, Webster,
104 Nicholas, Fayette, Summers, Monroe, Mercer, Raleigh,
105 Wyoming, McDowell, Mingo, Logan, Boone, Wayne,
106 Cabell and Lincoln. The director shall appoint the
107 members representing commercial whitewater outfit-
108 ters operating in each of the three regions so that one
109 of such members comes from each region. The director
110 shall likewise appoint the citizen consumer members so
111 that one of such members comes from each region. The
112 director shall serve as an ex officio member of the board
113 and shall serve as chairperson at meetings.

114 (f) The commercial whitewater advisory board shall
115 participate in the investigations and studies conducted
116 by the director. The board shall meet upon the call of
117 the chairperson or a majority of the members of the
118 board and shall meet within a reasonable time after
119 completion of the director's investigation and study
120 relative to each designated whitewater zone. At such
121 meetings the board shall review all data, materials and

122 relevant findings compiled by the director relating to
123 the investigation and study then under consideration
124 and, as soon as practicable thereafter, the board shall
125 promulgate rules and regulations to govern and apply
126 to that designated whitewater zone. Such rules and
127 regulations shall include, but not be limited to, the
128 following: (1) Minimum safety requirements for equip-
129 ment; (2) criteria for increasing or limiting the number
130 of commercial whitewater outfitters operating in
131 whitewater zones; (3) standards for the size and number
132 of rafts and numbers of persons transported in rafts;
133 and (4) qualifications of guides. Board members shall be
134 paid all reasonable and necessary expenses incurred in
135 the exercise of their duties.

136 (g) The board shall set the number of persons trans-
137 ported in rafts, pursuant to subdivision three, subsection
138 (f) of this section, at not less than the allocation in effect
139 on the first day of July, one thousand nine hundred
140 eighty-five.

141 (h) Upon promulgation of such rules and regulations,
142 the director shall immediately commence enforcement
143 of the rules and regulations promulgated by the board
144 relative to the designated whitewater zone. The promul-
145 gation of such rules and regulations and any revision
146 thereof shall be subject to the provisions of chapter
147 twenty-nine-a of this code.

148 (i) The director shall commence the first investigation
149 and study no later than the first day of July, one
150 thousand nine hundred eighty-one. All activities pursu-
151 ant to all investigations and studies, or as may be
152 required for the promulgation of rules and regulations
153 hereunder, shall be completed no later than the first day
154 of July, one thousand nine hundred eighty-eight.

155 (j) The commercial whitewater advisory board shall
156 terminate and cease to exist as an entity on the first day
157 of July, one thousand nine hundred eighty-eight.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 3

(By Delegates Knight, Minard, Anderson, Gilliam,
Given, Hatfield, Hawse, Johnson, Kelly, Louisos,
Love, Merow, Rollins, Southern, Stacy, Underwood,
Wellman, Woolsey, Ashley, Hoblitzell, Peddicord,
Richards, Rogers, Stiles and Traylor)

[Adopted May 22, 1986.]

Creating a commission for the celebration of the 200th anniversary of the United States Constitution.

WHEREAS, Our United States of America, having been governmentally united by the signing and enactment of its Constitution, and whereas that Constitution sets forth the fundamental laws of this great nation and defines the rights and liberties of its people; and

WHEREAS, The Constitution represents enduring principles which are cherished by the people; and

WHEREAS, The signing of that Constitution by a majority of the representatives to the Constitutional Convention took place on September 17, 1787, and will therefore reach its 200th anniversary in one year; and

WHEREAS, The Humanities Foundation of West Virginia has called for a discussion of the principals and ideas emanating from the Constitution; and

WHEREAS, It is the sense of the Legislature that an official group be organized to coordinate the activities proposed by various groups to celebrate the bicentennial anniversary of the signing of the United States Constitution; therefore, be it

Resolved by the Legislature of West Virginia:

That there is hereby established a commission to be known as the "Commission on the Celebration of the Bicentennial of the United States Constitution" and to be composed of ten commissioners, four of whom shall be appointed by the governor, three of whom shall be appointed by the President

of the Senate and three of whom shall be appointed by the Speaker of the House of Delegates; and, be it

Further Resolved, That a vacancy on the commission shall be filled by the official authorized to make the original appointment; and, be it

Further Resolved, That the members of the commission shall serve without compensation, and shall select a chairman, a vice chairman and an administrator from among their number; and, be it

Further Resolved, That the commission shall hold a first meeting on or by the first day of July, 1986, and a majority of those appointed shall constitute a quorum; and, be it

Further Resolved, That it shall be the duty of the commission to oversee, coordinate and report on the activities in the state of West Virginia related to the bicentennial anniversary of the signing of the United States Constitution and to plant such appropriate methods for the observance of this anniversary as the commission shall deem suitable and proper; and, be it

Further Resolved, That it shall also be the duty of the commission to cooperate with historical and other groups in the purposes and plans of said celebrations, and to advise with and encourage local and general celebrations by schools, churches, patriotic and service organizations, historical societies, and business, labor and civic organizations, and to do any and all things appropriate to make such celebrations and observances of this important event meet with the greatest degree of success and public participation.

SENATE CONCURRENT RESOLUTION 1

(By Mr. Tonkovich, Mr. President, by request,
and Senator Harman)

[Adopted May 22, 1986.]

Approving the issuance of revenue bonds by the West Virginia regional jail and prison authority in an aggregate principal amount not to exceed nineteen million dollars for the purpose of acquisition, construction, renovation, repairing, equipping and furnishing, as hereinafter specified, the four separate projects approved as to

maximum issuance of bonds authorized in respect of each separate project and approved as to purpose.

WHEREAS, Chapter 150, acts of the Legislature, regular session, one thousand nine hundred eighty-five, provided that the aggregate principal amount of all issues of bonds outstanding at one time by the West Virginia regional jail and prison authority for all authorized projects under such act shall not exceed one hundred million dollars; and

WHEREAS, No bonds have been heretofore authorized for issuance by any legislative concurrent resolution nor issued by the West Virginia regional jail and prison authority; and

WHEREAS, Such act provides that no bonds or obligations shall be issued or incurred pursuant to the provisions of such act unless and until the Legislature by concurrent resolution has approved the purpose and amount of each separate project; therefore, be it

Resolved by the Legislature of West Virginia:

That the issuance of revenue bonds by the West Virginia regional jail and prison authority in an aggregate principal amount not to exceed nineteen million dollars is hereby approved by the Legislature for the following specified four projects and in the maximum principal amount of bonds for each separate project, as specified, the proceeds of bonds issued to be expended for the purpose of:

(1) Acquisition of land and construction of a regional jail facility in Berkeley county to serve as the regional jail for Berkeley, Morgan and Jefferson counties and for equipping and furnishing such facility; with issuance of bonds therefor to not exceed four and one-half million dollars;

(2) Acquisition and construction of a regional jail facility in Kanawha county to serve as the regional jail for Kanawha, Clay and Roane counties and for equipping and furnishing of such facility; with issuance of bonds therefor to not exceed nine million dollars;

(3) Acquisition and renovation of the Mineral county jail to serve as the regional jail for Mineral, Grant, Hardy and Hampshire counties and for the equipping and furnishing of such facility; with issuance of bonds therefor to not exceed two

and one-half million dollars; and

(4) Acquisition and renovation of the Ohio county jail to serve as the regional jail for Ohio, Brooke, Hancock, Marshall and Wetzel counties and for the equipping and furnishing of such facility; with issuance of bonds therefor to not exceed three million dollars; and, be it

Further Resolved, That the purpose for which such revenue bonds are hereby authorized to be issued is also hereby approved, as to each separate project; and, be it

Further Resolved, That the Clerk of the Senate transmit a copy of this resolution to the Commissioner of the Department of Corrections, the Chairman of the West Virginia regional jail and prison authority.

SENATE CONCURRENT RESOLUTION 3

(By Senator Ash, et al.)

[Adopted May 22, 1986.]

Directing the Joint Committee on Government and Finance to appoint a Legislative Task Force on Insurance practices and Alternatives for the purposes of monitoring the actions of the insurance industry in response to remedial legislation enacted during the First Extraordinary Session, 1986, and for the further purposes of studying the availability of excess and primary liability insurance coverage in the State of West Virginia, and the feasibility and desirability of creating a reinsurance and excess liability fund or a primary liability coverage plan to be administered by the State or other public nonprofit entities, and to require a report back by a specified date.

WHEREAS, Grave concerns exist within this State in the availability of insurance coverage to many of its citizens; and

WHEREAS, The citizens of this State are entitled to adequate and competitive liability coverage; and

WHEREAS, The Legislature recognizes the need to address the concerns of the citizens of our State who desire and are entitled to adequate and competitive liability coverage; and

WHEREAS, The Legislature should place in effect such

statutory law or mechanisms as may be reasonably and fairly required to make liability insurance available and affordable to health care providers, professional service providers, governmental entities, and other public or private, profit or nonprofit, business enterprises; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to appoint a Legislative Task Force on Insurance Practices and Alternatives as follows: five members of the State Senate to be appointed by the President of the Senate, with no more than four such members being of the same political party; and five members of the House to be appointed by the Speaker of the House with no more than four such members being from any one political party; and five members to be appointed by the Governor as follows: one member representative of the professional liability insurance industry; one member representative of professional liability insurance consumers or policyholders; one member representative of the trial lawyers in this state; two members representative of the public generally, with no more than four members being from any one political party; and, be it

Further Resolved, That the aforesaid Legislative Task Force on Insurance Practices and Alternatives be directed to monitor, review, examine and study the following: the actions of the insurance industry in response to remedial legislation enacted during the First Extraordinary Session, 1986, the availability of insurance coverage in this State at reasonable and competitive rates; and the feasibility and desirability of creating a reinsurance and excess liability fund or a primary liability coverage plan to be administered by the State or other public nonprofit entities, and to require a report back by a specified date; and, be it

Further Resolved, That the aforesaid Legislative Task Force on Insurance Practices and Alternatives alert the Joint Committee on Government and Finance to any adverse change in the availability of insurance coverage in this State or any adverse change in the assurances of the insurance industry in response to remedial legislation enacted during the First Extraordinary Session, 1986, and in addition, shall prepare a comprehensive report of such study which shall include a

listing of all program options and alternatives available to the Legislature in the area of liability insurance together with the advantages and disadvantages of each and report to the Joint Committee on Government and Finance no later than the first day of December, one thousand nine hundred eighty-six, with its options, alternatives, findings, conclusions and recommendations; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 1987, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to implement its recommendations no later than the second Wednesday in January, one thousand nine hundred eighty-seven; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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The first column gives the number of the bill and the second column gives the chapter assigned to it.

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